Cooper Hand Tools, Division of Cooper Industries, Inc. *and* United Steelworkers of America, AFL–CIO, CLC. Cases 5–CA–24746, 5–CA–24938, 5–CA–25271, 5–CA–25436, and 5–RC–14076

April 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On March 20, 1996, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party each filed an answering brief. The Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] except as discussed below, and to adopt the recommended Order as modified.[3]

1. We find merit in the Respondent's exception to the judge's finding that it violated Section 8(a)(3) and (1) of the Act by failing to provide employee John Switzer with a wage increase in May 1995. The credited evidence shows that Switzer was not entitled to a wage increase at that time. We therefore find that the Respondent's failure to provide a wage increase was not unlawful. The judge correctly found, however, that Supervisor Jim Diffendarfer violated Section 8(a)(1) by attributing Switzer's failure to receive an increase to "the Union business."[4]

2. We affirm the judge's findings that certain conduct by three of the Respondent's hourly paid facilitators—Kenneth Grove, Deborah Pelen, and Kenneth Hanna—violated Section 8(a)(1) of the Act. We find no need, however, to pass on the judge's finding that these individuals are supervisors within the meaning of Section 2(11) of the Act.[5] For the reasons that follow, we agree with the judge's alternative finding that the hourly paid facilitators acted as agents of the Respondent within the meaning of Section 2(13) of the Act. With one exception, discussed below, their misconduct is attributable to the Respondent on this basis.

The Board applies common law principles of agency when it examines whether an employee is an agent of the employer while making a particular statement or taking a particular action. Under these common law principles, the Board may find agency based on either actual or apparent authority to act for the employer. As to the latter, "[a]pparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question." *Southern Bag Corp.*, 315 NLRB 725 (1994). See also *Alliance Rubber Co.*, 286 NLRB 645, 646 (1987). The test is whether, under all the circumstances, employees "would reasonably believe that the employee in question [the alleged agent] was reflecting company policy and speaking and acting for management." *Waterbed World*, 286 NLRB 425, 426–427 (1987), citing *Einhorn Enterprises*, 279 NLRB 576 (1986). Thus, it is well settled that an employer may have an employee's statement attributed to it if the employee is "held out as a conduit for transmitting information [from management] to the other employees." *Debber Electric*, 313 NLRB 1094, 1095, fn. 6 (1994).

Our review of the credited or undisputed evidence in the record warrants finding that the hourly paid facilitators were the Respondent's agents, under either an actual or apparent authority analysis, with respect to statements made to employees on their teams. The Respondent created the facilitator position as part of its institution of the "team concept" for production. An internal document, titled "Clarification of Facilitator Role" essentially ad-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We also find without merit the Respondent's allegations of bias on the part of the judge. On our full consideration of the record, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias in his credibility resolutions, analysis, or discussion of the evidence.

[2] In the absence of exceptions, we adopt pro forma the judge's finding that Manager David Bowman violated Sec. 8(a)(1) by threatening employees the day before the election that bargaining would be futile.

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] We note that the judge incorrectly stated that the Respondent's preelection grant of wage increases and bonuses was "in response to solicited employee complaints." This error does not, however, affect the conclusion that the Respondent violated Sec. 8(a)(3) and (1) and interfered with the election by granting these wage increases and bonuses.

[5] This does not affect our adoption of the judge's finding that the challenges to ballots cast by four hourly paid facilitators should be sustained. In this regard, there are no exceptions to the judge's finding that, even assuming the hourly facilitators are not Sec. 2(11) supervisors, they should be excluded from the production and maintenance unit for "community of interest" reasons.

Contrary to his colleagues, Member Hurtgen finds that facilitators Kenneth Grove, Deborah Pelen, and Kenneth Hanna are statutory supervisors and hence agents of the Respondent who violated Sec. 8(a)(1). In regard to the supervisory issue, Member Hurtgen relies on the judge's findings.

Member Hurtgen does not adopt his colleagues' conclusion that these facilitators are agents of the Respondent even apart from their status as supervisors. He questions this conclusion and its rationale. He agrees with his colleagues that, even under that rationale, Grove would not be an agent for purposes of the unlawful surveillance allegation if he were not a supervisor.

mits the actual agency authority of facilitators when explaining that their role was to "[m]aintain the company vision," and that "[t]he Facilitator needs to be the 'spokesperson' for the team as to what is going on in the company." The document draws no distinction between salaried facilitators, who are admitted supervisors, and hourly paid facilitators.

To fulfill their described responsibilities, the hourly-paid facilitators regularly attended production meetings ("F.A.C.T." meetings) with supervisory and managerial personnel. Following such meetings, the hourly paid facilitators would make announcements to team employees on management's behalf. The facilitators had the authority to schedule meetings with the employees on their teams, during which time the machines run by that team would be shut down. Hourly paid facilitator Deborah Pelen used such meetings in the summer of 1994 to communicate a new mandatory overtime policy and a new attendance recordkeeping policy. At these meetings, the facilitators would also respond to employee complaints. For instance, at one team meeting, Pelen addressed employee complaints about such matters as shift overlap and the qualification of a temporary employee to work without supervision.

Based on the foregoing, we find that the Respondent clearly vested hourly paid facilitators with the responsibility to implement many of the Respondent's policies on the production floor and that it held out these facilitators as the primary conduits for communications between management and team employees on a wide variety of employment and production matters. Under these circumstances, employees would reasonably believe that the hourly-paid facilitators knew management's views of the Union's organizing campaign and that the facilitators' statements and conduct reflected those views. Accordingly, we affirm the judge's finding that the facilitators acted as the Respondent's agents and as such committed violations of Section 8(a)(1) when Hanna, Pelen, and Grove made various coercive statements to team employees.

We do not find, however, that facilitator Grove's attendance at a union organizational meeting on August 7, 1994, involved unlawful surveillance or the unlawful creation of the impression of surveillance attributable to the Respondent. There is no evidence that the Respondent authorized or directed Grove to attend this meeting. The Union's representative in charge of the meeting directly questioned Grove about his presence, accepted Grove's explanation that he was there as a regular worker, and permitted him to remain. Under these circumstances, there is no basis for finding that employees would reasonably believe Grove acted as the Respondent's agent for purposes of surveillance or reporting about the union meeting. We shall, therefore, reverse the judge, dismiss the 8(a)(1) surveillance allegation, and modify the recommended remedial language by deleting reference to this conduct.

3. The judge concluded that, regardless of the results of a revised tally of ballots, including those cast by voters for whom challenges have been withdrawn or overruled, the Respondent's unfair labor practices warranted issuance of a remedial bargaining order based on proof that the Union had obtained valid authorization cards from a majority of unit employees. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). We would normally at least consider issuing a bargaining order in these circumstances. However, given the long and unjustified delay of the case here at the Board, we recognize that such an order would likely be unenforceable. See generally, *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1171 (D.C. Cir. 1996), and *Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d 1074, 1078 (D.C. Cir. 1996). Accordingly, rather than engender further litigation and delay over the propriety of a bargaining order, we believe that employee rights would be better served by proceeding directly to a second election in the event that the revised tally shows that a majority of unit employees have not voted for representation by the Union. Of course, in the event that the revised tally shows that a majority of unit employees have voted for the Union, the Regional Director shall issue a certification of representative.[6]

Although we will not impose a *Gissel* remedy in lieu of directing a second election in this case, we do find that an additional remedy is warranted in order to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices, and to ensure that a fair election can be held. Specifically, we shall order the Respondent to supply to the Union, on a request made within 1 year of the date of this Decision and Order, the names and addresses of all current unit employees. The Board's delay in acting in this case, although unfortunate, was no more the fault of the Union or the employees who were denied a fair opportunity to choose whether they desire Union representation than it was of the Respondent. Our Order will afford the Union "an opportunity to participate in restoration and reassurance of employee rights by engaging in further organizational efforts, if it so chooses, in an atmosphere free of further restraint and coercion." *United Dairy Farmers Cooperative Assn.*, 242 NLRB 1026, 1029 (1979), enfd. in relevant part 633 F.2d 1954 (3d Cir. 1980).[7]

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[6] Given our finding that a *Gissel* bargaining order is not warranted, the Respondent's motion to reopen the record is moot. We deny the motion.

[7] The Board has previously ordered this remedy in cases where it found that remedial measures in addition to the traditional remedies for unfair labor practices were appropriate. See, e.g., *Monfort of Colorado*, 298 NLRB 73, 86 (1990), enfd. in relevant part 965 F.2d 1538 (10th Cir. 1992); *United Dairy Farmers Cooperative Assn.*, 242 NLRB at 1030; *Haddon House Food Products*, 242 NLRB 1057, 1059 (1979),

ORDER

The National Labor Relations Board orders that the Respondent, Cooper Hand Tools, Division of Cooper Industries, Inc., York, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act by coercively interrogating employees about their activities on behalf of United Steelworkers of America, AFL–CIO, CLC; by soliciting grievances from employees in order to dissuade them from engaging in union activities; by promising employees a better wage and benefit package in order to dissuade them from supporting the Union; by promising employees that they would receive benefits if they rejected union representation, telling them that pay inequities would be corrected, that everyone would be placed on a team system, and that these steps would be completed within a reasonable time; by telling employees shortly before a Board representation election that their "red circle rates" will be eliminated; by threatening employees with discharge, plant relocation, plant closure, or other reprisals for engaging in union activities; by telling employees that the Employer would see their signed union authorization cards; by telling employees that collective bargaining would be futile because the Employer would not negotiate in good faith with the Union if the Union is selected by them; by telling employees, after a Board representation election, that the Employer would have given them a greater wage and benefit package if the Union had not filed charges against it with the Board; and by placing the onus for the Employer's lack of pay system changes on the Union for having filed charges with the Board.

(b) Discriminatorily granting hourly wage increases and bonuses to its employees and permitting employees to return to a straight 8-hour shift with a paid lunch break and to change their shift hours shortly before a Board representation election in an attempt to discourage membership in and support for the Union.

(c) Discriminatorily disciplining employee Stanley Kinard because he engaged in protected union activities.

(d) In any like or related manner interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act:

(a) Supply the Union, on its request made within 1 year of the date of this Decision and Order, with the full names and addresses of its current unit employees.

(b) Make whole Stanley Kinard for any loss of earnings and other benefits suffered as a result of his discriminatory suspension, with interest, as provided in the remedy section of the judge's decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days from the date of this Order, remove from its files any reference to the above discriminatory suspension of employee Kinard and notify him in writing that this has been done and that evidence of this discriminatory action will not be used as a basis for future personnel action against him.

(e) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 1, 1994.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 5–RC–14076 is severed and remanded to the Regional Director for the purpose of opening and counting the 10 remaining determinative ballots.[9] Thereafter, the Regional Director shall prepare a revised tally of ballots. If the tally shows that the Union has won the election, the Regional Director

enfd. in relevant part sub nom. *Teamsters Local 115 v. NLRB*, 640 F.2d 392 (D.C. Cir. 1981); and *Loray Corp.*, 184 NLRB 557, 559 (1970).

This remedy is in addition to the Union's right to have access to a list of voters and their addresses under *Excelsior Underwear*, 156 NLRB 1236 (1966), after issuance of the Notice of Second Election.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[9] These are the ballots of Tim Wallace, Herb Gordon, James Grimes, Tom Harlacher, Joseph Kile, Wilmer Wilson, Dave Gauntlett, Robert Osmolinski, Chris Renner, and Lance Walter.

shall issue a certification of representative. If it shows that the Union has lost the election, the Regional Director shall direct a second election.[10]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, and coerce our employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, by coercively interrogating employees about United Steelworkers of America, AFL–CIO, CLC's activities; by soliciting grievances from employees in order to dissuade them from engaging in union activities; by promising employees a better wage and benefit package in order to dissuade them from supporting the Union; by promising employees that they would receive benefits if they rejected Union representation, telling them that pay inequities would be corrected, everyone would be placed on a team system and these steps would be completed within a reasonable time; by telling employees shortly before the Board-conducted representation election that their "red circle rates" will be eliminated; by threatening employees with discharge, plant relocation, plant closure or other reprisals for engaging in union activities; by telling employees that the Employer would see their signed union authorization cards; by telling employees that collective bargaining would be futile because the Employer would not negotiate in good faith with the Union if the Union is selected by them; by telling employees after the Board-conducted representation election that the Employer would have given them a greater wage and benefit package if the Union had not filed charges against it with the Board; and by placing the onus for the Employer's lack of pay system changes on the Union for having filed charges with the Board.

WE WILL NOT discriminate in regard to hire or tenure or terms and conditions of employment of our employees in order to discourage membership in the Union, in violation of Section 8(a)(1) and (3) of the Act, by granting hourly wage increases and bonuses to employees shortly before the Board-conducted representation election in an attempt to discourage membership in the Union; by similarly permitting employees to return to a straight 8-hour shift with a paid lunchbreak and permitting employees to change the hours their shift began and ended shortly before the representation election; and by discriminatorily disciplining employee Stanley Kinard.

WE WILL NOT in any like or related manner interfere with, restrain, and coerce our employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

WE WILL supply the Union, on its request made within 1 year of the date of this Decision and Order, with the full names and addresses of our current unit employees.

WE WILL make whole employee Stanley Kinard for any loss of earnings and other benefits suffered as a result of his discriminatory suspension, with interest, as provided in the Board's Decision and Order.

WE WILL preserve and make available to the Board or its agents upon request all payroll records and reports and all other records necessary to determine backpay and compliance under the terms of this Decision and Order.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the discriminatory suspension of employee Kinard and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that evidence of this discriminatory action will not be used as a basis for future personnel action against him, as provided in the Board's Decision and Order.

> COOPER HAND TOOLS, DIVISION OF COOPER INDUSTRIES, INC.

Eileen Conway and *James R. Rosenberg, Esqs.,* for the General Counsel.
Larry J. Rappoport, Esq., for the Respondent.
Christyne L. Neff, Esq., for the Charging Party.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges and amended charges were filed in Cases 5–CA–24746, 5–CA–24938, 5–CA–25271, and 5–CA–25436 on September 21 and December 5, 1994, on April 10 and 27, 1995, and on June 19, 1995. Unfair labor practice complaints and amended complaints were issued on April 28, May 31, and July 18, 1995. The complaints were further amended at the subsequent hearings. Briefly, the General Counsel alleged in the complaints that Respondent Employer, in resisting the Charging Party Union's attempt to represent its employees, had interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the

[10] The Notice of Second Election should include language informing employees that the first election was set aside because the Board found that certain conduct by the Respondent interfered with the employees' free choice. *Lufkin Rule Co.*, 147 NLRB 341 (1964). See NLRB Casehandling Manual (Part Two), Representation Proceedings, Sec. 11452.1.

National Labor Relations Act, by coercively interrogating employees concerning their interests in the Union; by promising employees a better benefit package in order to dissuade them from supporting the Union; by engaging in surveillance of a union meeting; by stating within the hearing of employees that the Employer wanted the names of employees who had attended a union meeting; by telling employees that they could be fired if the Employer found out who had signed union authorization cards; by telling employees that the Employer would see union authorization cards signed by the employees; by telling employees that bargaining would be futile because the Employer would not negotiate with the Union; by soliciting grievances from employees in order to dissuade them from engaging in union activities; by telling employees that they would get fewer benefits if they selected the Union as their bargaining representative; by telling employees that "their red circle rates would be eliminated" in order to discourage their support of the Union; by telling an employee union supporter that he would not have a job if the Union was not elected as the employees' bargaining representative; by telling employees to get jobs elsewhere because they supported the Union; by telling employees that the Employer would have given employees greater wages and benefits if it had not been for union charges filed with the NLRB against the Employer; by threatening employees that it would close or relocate its facility if they selected the Union as their representative; by placing the onus for the Employer's lack of pay system changes on the Union for having filed charges; by telling an employee that his pay raise was being held up because the Union is fighting to get another election; and by promising employees that they would receive benefits if they rejected union representation, telling them that pay inequities would be corrected, everyone would be placed on a team system and these steps would be completed within a reasonable time.

The General Counsel further alleged that Respondent Employer also had discriminated in regard to the hire or tenure or terms and conditions of employment of its employees thereby discouraging membership in the Union, in violation of Section 8(a)(1) and (3) of the Act, by granting hourly wage increases to some 30 named employees; by granting $100 bonuses to some five named employees; by returning employees to a straight 8-hour shift and permitting employees to change the hours their shift began and ended; by discriminatorily disciplining employee Stanley Kinard; and by denying a performance wage increase to employee John Switzer and "placing the onus for that decision on the Union."

In addition, the General Counsel alleged that a majority of Respondent Employer's employees in an appropriate unit had designated and selected the Union as their representative for the purposes of collective bargaining; that Respondent Employer's unfair labor practices, as alleged, are so serious and substantial in nature that the possibility of erasing their effects and conducting a fair and free representation election or rerun representation election by use of traditional remedies is slight; and that, consequently, the employees' sentiments regarding representation having been expressed through union authorization cards would on balance be protected better by issuance of a bargaining order than by traditional remedies.

Consolidated with the above unfair labor practice cases for hearing and decision are pending objections and challenges filed by the Union in the related representation proceeding, Case 5–RC–14076. As the Regional Director's Supplemental Report on Objections and Challenges shows, the Union had filed a petition to represent the Employer's production and maintenance employees on July 25, 1994; a secret-ballot election was conducted pursuant to a stipulated election agreement on September 16, 1994; and, of approximately 393 eligible voters in the unit, 176 votes were cast for the Union, 182 votes were cast against the Union and there were 23 ballots challenged by the Union. The Union also timely filed some 30 objections to election conduct. A number of these challenges and objections have since been withdrawn. See G.C. Exh. 1(u), Tr. 13 to 14, 1506 to 1508, and 2693.

Counsel for Respondent Employer, in the answers filed, denies that the Employer has violated the Act as alleged and that a bargaining order is an appropriate remedy. Further, counsel for Respondent Employer also opposes the Union's pending challenges to votes cast in the representation election and the Union's pending objections to election conduct as lacking merit.

A hearing was held on the issues thus raised in York, Pennsylvania, on August 2, 3, 4, 7, 8, 9, 10, 11, 16, 17, and 18, 1995. And, on the entire record in this consolidated proceeding, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. THE UNFAIR LABOR PRACTICE PROCEEDINGS

FINDINGS OF FACT

Respondent Employer manufactures chains and other industrial products at its York, Pennsylvania facility, and is admittedly engaged in commerce as alleged. Charging Party Union is admittedly a labor organization as alleged. The Union initiated its campaign to organize the Employer's some 393 production and maintenance employees during March 1994. The Union requested recognition from the Employer on July 21, 1994, and the Employer refused. See G.C. Exhs. 49 and 50. The Union thereafter filed a representation petition on July 25, 1994, and a Board-conducted representation election was held on September 16, 1994. The Employer opposed the Union's attempt to represent its employees. Summarized below is the pertinent testimony and documentary evidence relating to the Employer's conduct during this sequence of events.

A. The Employer Institutes the "team concept" in 1992 and 1993; the Employees Become Dissatisfied and seek Union Representation in Early 1994; and the Employer grants Pay Raises and Bonuses Shortly Before the Representation Election

Dennis Leber has been employed by Respondent Employer for about 22 years. He testified that the Union's organizing campaign started during March 1994. He worked on the "Union organizing committee," "handed out Union cards" and made "house calls during the campaign." He was asked "what prompted [his] involvement" in the Union's organizing campaign, and he explained that he was "upset with the team concept" which had been instituted by the Employer during 1992 and 1993—the employees had become dissatisfied "because it wasn't working . . . ."

Leber had "first heard" about the Employer's "team concept" at work during 1992. Later, during September or October 1993, he was placed on the Employer's newly instituted "prep polish team." He identified his "team charter" (G.C. Exh. 10) and his "team startup kit" (G.C. Exh. 11) which indicates the six "star points" or "team members" who were to "help" the

"team." Leber was in fact designated as the "star point" entrusted with his "team administration." Leber also identified "notes" of numerous "team meetings" commencing about September 7, 1993. See G.C. Exh. 12. See also C.P. Exhs. 26 to 30.

Under this "team concept," as Leber explained, employees initially would receive a "team training rate" of hourly compensation; after they demonstrated that they were "competent in performing an individual function and training in other team areas" they would get a higher "individual team rate" of hourly compensation; and, ultimately, they would get a higher "certified team rate" of hourly compensation when they demonstrated that they were "competent in performing and training all job functions within the designated level within the team," as well as a "$100 bonus . . . upon achieving the certified team rate." See G.C. Exhs. 21 and 22.[1] However, the above "team rates" of hourly compensation, although introduced by 1993, were concededly not implemented until shortly before the September 1994 representation election.

Leber testified:

> Q. Did you [Leber] understand . . . that there was now [in 1993] a merit pay concept that was associated with the new pay rate . . . employees could move to levels two or three upon demonstrating some proficiency?
>
> A. Yes.
>
> Q. Now isn't it true that one of the things that the teams were supposed to do was to establish skills [lists]?
>
> A. Yes.
>
> Q. Isn't it also true that the teams never really got to that objective?
>
> A. Well, it was brought up a few times and we never did get to it, no.
>
> Q. On that page of [G.C. Exh. 12] is that the list that was required in order for someone to get to the individual rate or the team rate . . . .?
>
> A. Yes.
>
> Q. But in February 1994 the skills list wasn't ready?
>
> A. No.
>
> Q. So people couldn't get to the individual rates . . . [or] to the team rates, could they?
>
> A. No.
>
> Q. Will it be fair to say that in the month of March 1994 that you do know that the skills list still wasn't ready?
>
> A. Yes.
>
> Q. And would you agree with me that once it was finished that certain employees qualified for individual rates or team rates?
>
> A. I don't know if they qualified. I don't know what the qualifications were. But I heard they got raises. Yes.

Employee Randy Coy similarly recalled the Employer's institution of the "team" and "new wage system" by October 1993. Coy was a "training star point" on the "prep polish team." Coy was responsible

> to see that everybody was trained properly in their department to go to their individual rate and to see to it that if anybody wanted to move into the team rate . . . [to] get them cross-trained . . . .

Coy explained, however, that he was not sufficiently "trained" or "assisted" in fulfilling these responsibilities. Employees repeatedly asked at "team meetings" and "in the shop" "about getting team raises" and "when it was going to happen." He responded that "I [Coy] am trying the best I can to get it moving." Coy was shown a document (G.C. Exh. 52) identified as a "team skills inventory form for the prep polish team." Coy testified:

> Q. Was anything done by the Company to implement any of those forms or things on that document during the span of time from the fall of 1993 until the election of 1994?
>
> A. No, there was not.

Coy recalled that it was not until August 1994 when Company "facilitator" Deb Pelen

> came to me [Coy] and asked me to get everybody on our team checked off as soon as possible . . . they want them checked off and to team rate as soon as possible . . . get everybody together and have them checked off as soon as possible . . . .

Coy "did exactly what she [Pelen] told me." See Tr. 357 to 360, 366 to 372.[2] And, "as a result of this check off procedure" some six to eight employees on his "team" were given "raises" shortly prior to the representation election. Coy never received any "explanation" from Management as to "why it was taking from 1993 to 1994 to implement this program."

See also the testimony of employees Shea Hurley, Tr. 587 to 604; and Jeffrey King, Tr. 722 to 727. Employee Jeffrey King, one of the employees who also had suddenly received a pay raise under the "team concept" shortly before the representation election, noted that he "was able to do those same jobs" required to obtain such a pay raise under the "team concept" "a year before that."

And, employee Brian Snyder similarly testified that he was placed on the Employer's "specials team" created in 1993 and made its "quality star point." See G.C. Exhs. 61, 62, and 63. He too "kept asking when we could go to this [next] level" under the "team concept" and thus "get our top pay." In his view, he was "already trained" and he was "qualified for such a raise under the team system . . . four months after [he] had started the job" in September 1993. It was not until about August 1994 when Management evaluated his and his coworkers' "qualifications" in order to determine whether they possessed the required "skills." His "individual rate pay increase" under the "team concept" was thereafter made "effective August 15, 1994."

Further, employee Jeffrey Eshelman was placed on the "wire prep team" by October 1993. He understood that "once you could prove that you knew how to do three jobs you moved to the top." He in fact "could do all three of the jobs" by October 1993. Consequently, he questioned Management "why [he] couldn't go to the top right away," however, "they basically

[1] The Employer's earlier 1992 "merit increase step guideline" with the various hourly rates of compensation is depicted in G.C. Exh. 20.

[2] Coy noted that long "before the election" he had to some limited extent gone through a "check off procedure" for some team employees, but those employees "did not" then "receive raises as a result of that check off." Following this "early check off" he did not thereafter check off any employees until "just before the election."

dragged their feet. . . .” Finally, shortly before the union representation election, he and two coworkers who were similarly qualified were told that they “were going to move to the top.” He then received an hourly increase and also a $100 “bonus.”

Employee Scott Sargen was not a member of any “team” during the pertinent time period. However, he recalled that during August or September 1994 he and various coworkers were tested as to their job skills and then granted pay raises. Sargen testified:

> I [Sargen] heard guys informing that they were getting raises. We heard that if they know their job then they will get their pay raise on up to the top. . . . [Employees were told that] if we know the job then we’ll get the raise.

Sargen, like the various “team” members, was tested and then received an hourly rate increase shortly prior to the representation election. See also the testimony of employee Linda Flaharty, Tr. 899 to 903. Flaharty was similarly evaluated and given a raise shortly before the representation election.[3]

Employee George Lighty, placed on the Employer’s “GBSR team,” related how he had received a $100 “bonus” during “early September” 1994. He did not “expect to get a raise at that time” because he did not “know all the job skills” on his “team.” He testified:

> [Supervisor Austin] Miller came out with an envelope and said here is your check . . . and he called the other employees over before he gave it to me . . . he handed me a check and congratulated me . . . . [The other employees also were] more or less surprised.

Other employees were to receive such a “bonus” and, in addition, he had “heard” that “there were numerous raises given to different employees.” See G.C. Exhs. 80 and 91. See also the testimony of employee Loy Crayley, Tr. 960 to 968, 971 to 973. Crayley also received a $100 “bonus” shortly before the representation election even though he too “didn’t expect it.” Cf. Tr. 2701 to 2705.[4]

David Bowman testified that during the summer and fall of 1993 he was the “facilities manager” at the York plant. Bowman, during the representation proceeding and Union campaign, was suddenly selected to replace “director” Fred Brindisi. See R. Exh. 11. Bowman is presently the Employer’s “manager of operations.” Bowman reviewed the Employer’s initial efforts to institute a “team concept” at York commencing in 1992. Initially, a “steering team” was created and later, in 1993, the “first team,” “the load chain team,” was formed. Thereafter, also in 1993, the Employer formed the “specials,” “prep polish” and “wire prep” “teams.” It was, assertedly, the “Company’s intent” that “everyone would be a part of a team.” Apparently, that has never occurred.

Bowman recalled that during October 1993 the Employer changed its “payroll system” for “all hourly employees except maintenance”[5] See G.C. Exh. 21. During that time, some three “teams” were “functioning.” Bowman, insofar as pertinent here, explained:

> there were three [support] levels [and] three rates within each level . . . the team training rate . . . the individual rate and the team rate . . .; if [the team employees] demonstrated proficiency they would move to the individual rate or there were quarterly increases . . . a quarter at a time . . .; [and team employees would move from the individual rate to the certified team rate] if they cross trained and learned every job within [their] support level . . . .

However, for many months after this new “system” had been put in effect in 1993, “criteria” had “not been established to allow employees to advance either to individual team rates or certified team rates.” As a consequence, Management started receiving numerous employee “complaints.” Nevertheless, it was not until “around March or early April” 1994 when Management decided that “we should have one person in charge of establishing the criteria with the teams, putting the job profiles together and beginning to try to get people on the team rate.” Management then picked a “trainer” from personnel named Mike Smeltz to do this job. Smeltz assertedly “completed the criteria” “in the late June–July time frame” and then Management “began to try to get people to the rate they needed to be at.” Team members “would demonstrate or verify that they could do the jobs established by the criteria,” and the Employer first “began providing team rates in August 1994.” However, in addition, “other employees [who were not on teams] advanced to individual team rates by a demonstration of proficiency.” See Tr. 1971 to 1978. Bowman was asked “why did you change your plan . . . and do this for non-team members as well as team members at that particular time.” He responded: “Because we were not able to implement teams as rapidly as we hoped to.” See Tr. 1979 to 1989.

Bowman testified on cross-examination:

> Q. There is no document that says that an employee who is not on a team may progress to the individual rate by demonstrating proficiency?
>
> A. Not that I know of.
>
> Q. The Employer never told any employees who were not team members that they could get a raise by demonstrating proficiency at any time before the Company started taking those non-team members through the check off procedure, correct?
>
> A. That’s true . . . .

Michael Bobay was the Employer’s “manager of production teams” at York commencing in September 1993. He recalled that “they had a handful of teams and the goal was to implement the remainder of the plant into teams” “as soon as we could get it done.” He noted that “a big part of the [newly adopted] pay system was the check off list for training rates and team rates”; however, “criteria” were not “in place in October 1993 when the new system was implemented” and “announced” to the employees and, further, Management wanted “uniformity” among the “teams,” that is, it “didn’t want one team to be real easy to get to a team rate or individual rate and

[3] Counsel stipulated (Tr. 928 to 930) that some 13 of the approximate 30 employees named in par. 23 of the amended complaint, who admittedly had received substantial pay raises shortly prior to the representation election, were not in fact “team” members.

[4] See also the testimony of employee Richard Keister, who was not on a “team,” pertaining to his attempts to get a pay raise before the representation election and Management’s granting of his raise during late 1994 after testing his skills. Keister assertedly was qualified for such a raise long before his testing. Tr. 1081 to 1089.

[5] Maintenance employees remained on a “time-based education-based scale.” See Tr. 1958 to 1959.

another team being really difficult and very precise in how that was going to happen."

Months later, on or about March 11, 1994, Management announced that "trainer" Mike Smeltz should be given this "task," that is, "establishing the criteria." See R. Exh. 15. Bobay assertedly first received "a workable draft" of a "check list" system from Smeltz "in the end of July or early August 1994." Thereafter, some "team" employees began receiving "wage increases." In addition, Management determined at the time to "apply the criteria to [some] non-team members" "because we knew they weren't going to be on a team" "for some time." Bobay denied that this implementation was "related to the Union campaign or to the Union petition."

Former Company "facilitator" Debbie Pelen generally denied "rushing Randy Coy through the check list process" or "putting any pressure on him" so that employees could get their pay raises shortly before the representation election. She was, however, "aware" that "employees were [then] anxious to get their increases" "because we were working on the book for months and months and months . . . ."

Myles or Mike Smeltz, a "training coordinator" for the Employer, testified that on or about March 11, 1994, he was first assigned "the responsibility to develop the skills evaluation relative to the job skills and the job profiles" in conjunction with the Employer's new pay system which, as noted, had been instituted months earlier in October 1993. He was uncertain whether or not "Union activity was commencing in the facility" at that time. He had not previously been involved "in establishing team skills inventories." He characterized this new assignment as "basically a lot of work" and "bogged down." He listed a number of additional "impediments" in this "project," including, inter alia, the fact that he "didn't even know how to turn the computer on much less operate one"; he had never before "put together in a formal manner for computerized use all the elements of skills inventories for six separate teams"; he had "no clerical assistance" in this undertaking; and he "also had other job responsibilities."

Smeltz specifically recalled that there had been "concern" on the part of Management "with regard to consistency and uniformity between one team and the other," and that he in fact had first "finished" his phase of this entire "project" "approximately October 1994." He acknowledged that he had "finished some of the skills inventories prior to that time," and, as noted, pay raises were granted to various employees thus affected shortly before the union representation election. He did not "know" "at what point" "the skills inventories" were "ready" that "went into use in August 1994." He was asked, "with regard to consistency," if Management had explained to him "why all the team skills inventories were not delayed for implementation until they were all completed," and he responded: "That was never related to me." Management, assertedly, had not "advised" him that this "project" "had to be done in connection with the Union petition or Union campaign."

See also the testimony of Jessie Eyer, the Employer's employee relations representative, Tr. 2662 to 2666.

B. Coercive Interrogation; Warnings that the Employer would not Negotiate with the Union; and Promises of Benefits

On August 19, 1994, the Employer's then Plant Director Fred Brindisi wrote the unit employees (G.C. Exh. 23):

> The Union election will be held on September 16, 1994. Your vote will be an important decision that will not only affect your families' future but also the future of Campbell Chain and all Campbell employees . . . .
>
> . . . .
>
> It is important that we continue to make changes to improve our Company; however, I'll be the first to admit we must do a better job in how we design and implement any necessary changes. You have made it clear that the Company should get input and recommendations from employees before changes are made. I recognize that in our effort to remain the number one chain manufacturer and beat the competition we have made some mistakes. Management has been preaching teams and employee involvement but Management has not always been practicing these concepts. You have gotten my attention and this will change!

Ray Wintermyer has been employed by the Company for some 20 years, and was an open union supporter. Wintermyer testified that shortly prior to the representation election supervisor Terry Wallace asked him at the plant "why we needed a Union." Wintermyer responded: "Because we lost our retirement . . . . hospitalization . . . . and profit sharing . . . ." Wallace admonished Wintermyer: "If I [Wintermyer] didn't like the retirement there I should go someplace else for a job." Wallace, in this same or another conversation, also apprised Wintermyer that "Cooper Tool was too big a Company to negotiate with the Steelworkers . . . they just wouldn't negotiate." In addition, Wintermyer recalled Company Official Bernard Koehne similarly apprising the assembled employees shortly prior to the representation election:

> He [Koehne] . . . was . . . a Company negotiator . . . [and] when they left [Company headquarters in] Houston with a package for Cooper Tool that's all there was . . . there was no other negotiations on their part . . . there was no better deal coming out of Houston but the deal that they had . . . they would not give one more inch . . . .

Employee Jeffrey Beam similarly recalled that Company Representative Koehne told the assembled employees shortly before the representation election that "Texas makes up what every plant that Cooper owns gets and there is no bargaining on that whatsoever." Employee Lawrence McFatridge similarly "understood" Company Representative Koehne to be telling the assembled employees shortly before the representation election that "we will not negotiate a contract"—"the Company would refuse to negotiate a contract."

In addition, employee George Lighty related how Company Representative Koehne apprised the assembled employees "during the period just before the election" that

> they [the Employer] would not negotiate with the Union . . . the Company only had so much to offer and they weren't negotiating with them . . . .
>
> . . . .
>
> the Company policy was not to negotiate with the Union . . . they only have so much to give no matter what . . . .

Greta Shimmel was employed by the Company during the Union's campaign. Shimmel testified that on September 15, the day before the representation election, Supervisor Terry Wallace "told our group that we had to go to [a] meeting." She and some 20 coworkers attended the meeting commencing about 1 p.m. and lasting about an hour and a half. There, Manager David Bowman, who as noted had replaced Brindisi during the organizational campaign, apprised her and her cowork-

ers, in part as follows (see Tr. 276 to 280, 313 to 314, 2003 to 2005, and G.C. Exh. 34):

> As you know, all Union contracts are negotiated between Houston and the Union. Anyway you look at it, that leaves you and me out of the picture. . . . You and I have the most to lose and, in the end, will have the least to say.
> . . . .
> There is no question that we have gotten way off the track over the last few years . . . we must approach things differently . . . . I cannot stand here and make you promises, but I can stand here and tell you that Management has got the message and is listening.
> . . . .
> The message is clear we have to address the pay inequities. . . The pay system that was implemented was supposed to apply to everyone. . . .The new pay system was established to enhance development of teams. Everyone was supposed to be entitled to the same opportunities. What went wrong is we don't have everyone on the team system. This is a situation that must and will be corrected. . . . All I am able to give you at this time is my personal commitment that Management will address this concern and in a reasonable time frame.

Shimmel and various coworkers voted at 7 a.m. the next day.

See also the testimony of employee Loy Crayley, Tr. 968 to 971. Crayley was told by Company Representative Charles McCloskey shortly before the representation election "that we were getting a pretty good package this year" and "there would be a big increase in October," and by Company Representative Koehne that "all of Cooper's facilities would get the same package whether they were Union or non-Union." And, see the testimony of employee Linda Flaharty relating statements made by one of a number of "visitors to the plant from other Cooper facilities" shortly before the representation election to the effect that "we'd be better without" the Union and the Employer "had a better package deal to give us this year," Tr. 904 to 905.

Shane Mittel was employed by the Company during the spring and summer of 1994. He was later terminated by the Employer for attendance and related problems. He testified that on the day before the representation election, while eating and drinking at the local "VFW Hall" with his brother, Supervisor Charles McMahon "came into" the "Hall," "sat down and saw us and said tomorrow's the big day." Then, according to Mittel,

> He [McMahon] started asking us why—what reasons we wanted a Union . . . we gave him our reasons . . . we were losing benefits . . . [and] he said we were going to be surprised if the Union did not get in . . . we'd be surprised with the package we were going to get in October . . . . And he also told us that if the Union did get in that the Company would be moving to Mississippi, they were building a warehouse there . . . . He said . . . that he couldn't afford to lose his job and he didn't think none of us could afford to lose our jobs also . . . .

Mittel also overheard Supervisor Austin Miller similarly tell employees at the plant shortly before the representation election

> that he [Miller] couldn't afford to lose his job if the Union got in, the Company would close [its] doors and leave . . . they had made some mistakes . . . give the Company a chance . . . .

And, later, on the day of the election, Supervisor James Diffendarfer summoned Mittel to "his office" and apprised the employee:

> He [Diffendarfer] couldn't afford to lose his job . . . he didn't think anybody else could afford to lose a job . . . the Company wouldn't tolerate having a Union come through the doors . . . . He showed me [Mittel] a ballot that I'd be voting with . . . [and] put a check [in the no box] . . . .

Employee Richard Keister testified that Supervisor Gary White had the following conversation with him at work some weeks before the representation election:

> He [White] asked me [Keister] how things were going and . . . if there is anything he could do for me . . . . He said the Company was looking to give a good benefit package out in October but he wasn't sure what was going to happen to it if the Union got in . . . .

In addition, employee Stanley Kinard, whose testimony is discussed further in section G, below, recalled "facilitator" or "supervisor" Ken Hanna stating to him at work during August 1994,

> if the Union would come in here . . . they could and would unbolt these machines from the floor so fast and move out of here it's not funny . . . .

Kinard also recalled Company Representative Koehne addressing assembled employees shortly before the representation election. He testified:

> Mr. Koehne stated . . . when we come in to negotiate a contract . . . we give you the bottom line . . . you can take it or leave it . . . .

He raised his hand and asked Koehne, "you mean you don't have to sit down and negotiate in good faith." Koehne responded: "we give you the bottom line and you either take it or you go on strike." He again raised his hand and asked, "isn't there collective bargaining . . . while we work towards an agreement . . . beneficial for both sides . . . ." Koehne responded: "that wouldn't serve any purpose . . . you take the bottom line or you go on strike . . . ."

Bernard Koehne, the Employer's director of employee relations stationed at corporate headquarters in Houston, Texas, testified that the Employer's various divisions have a number of facilities throughout the United States including those with union collective-bargaining agreements; that his section does "all the labor contract negotiations" and handles union organizational campaigns such as we have here; that Charles McCloskey, vice president of employee relations for Cooper Hand Tools stationed at Raleigh, North Carolina, advised him of the Union's organizational effort at York "sometime in April 1994"; and that he and McCloskey thereafter visited the York facility where Management's representatives were instructed, inter alia, not to "engage in conduct that involves promises, surveillance, threats or interrogation" (see R. Exh. 14).

Koehne recalled a "series of meetings with York employees during the last week of August 1994." He denied, inter alia, telling the assembled employees that "the Company would not negotiate with the Union" or "they would all get the same wage and benefit package regardless of whether they were unionized" or that the Employer "engaged in any kind of take it or leave it bargaining," and he assertedly demonstrated that such was not the case by referring to benefits at the Employer's other

facilities. Koehne, although admittedly aware that employee Kinard was an open and active union supporter, could not "recall" whether Kinard had asked him "questions" during one of his meetings or speeches to the assembled employees.

William Fuller, formerly an employee relations specialist for the Employer, testified that he had been assigned to work on the "organizing campaign" at the York facility; he had been "instructed" by Koehne "to be careful about what you say"; he spoke to about 50 York employees during the "campaign" including employee Flaharty whose testimony is noted above; he denied, inter alia, making coercive statements or promises to employees; and he acknowledged stating to Flaharty that "Houston sets the parameters in bargaining."

James Diffendarfer, a supervisor for the Employer, claimed that he had been instructed by Management only to discuss the Union with the employees "if they brought the subject up." Elsewhere, he recalled that he was given a "facsimile of a Union ballot" or "election ballot" and "told to show this to the employees . . . to encourage them to vote." He insisted, however, that he "did not tell them how to vote." Elsewhere, he could not "recall" showing employee Mittel "a copy of the ballot." He denied, inter alia, discussing the Union with Mittel shortly before the election.

Gary White, a supervisor for the Employer, claimed that he had been instructed by Management that "we could not spy . . . harass [or] interrogate" employees and was given a copy of Respondent's Exhibit 14. He assertedly never initiated discussions with employees about the Union. However, he recalled that he in fact had discussed the Union with employee Keister. He had asked Keister "if there was anything I [White] could do for him or if there was anything he wanted to talk about." Keister assertedly was "concerned as to how the Union vote would affect the [pay] package that we normally get in October." White assertedly responded:

> I [White] told him [Keister] that my feeling was that the Union was not necessary at Campbell . . . yes there is an October package . . . nobody knows what that package is going to be . .

White denied, inter alia, making "promises" or other coercive statements attributed to him by employee Keister.

Company Supervisor Charles McMahon testified that he too was "instructed" by Management "as to what [he] could or could not say" to employees. He was asked whether or not he was at the "VFW Hall" on September 15, 1994, in connection with the above testimony of employee Mittel. He responded: "I can't recall . . . ." He denied, inter alia, making "any promises" or "any statements about the [pay] package" or "about the possibility of Cooper closing the plant."

Company Supervisor Terry Wallace testified that he too was "instructed" by Management as to "what we could say and what we couldn't say regarding the Union." Elsewhere, Wallace acknowledged that it was "possible" that he had discussions with employee Wintermyer "about the Union." Wallace insisted that Wintermyer "would have initiated the discussions," and denied, inter alia, making coercive statements attributed to him by the employee.

Charles McCloskey testified that he was during the Union's organizational campaign the Employer's vice president of employee relations stationed in Raleigh, North Carolina. He visited the York plant frequently during the campaign speaking with Management representatives and numerous unit employees. He specifically recalled employee Crayley telling him on one such occasion that Crayley was "displeased" with his "skill grade level." He assertedly "just listened" and made no "promises" or "commitments." He claimed that the "October [pay] package" was not "finally determined" until "after the election." He acknowledged, however, that the "issues involved in the York plant campaign" included the "plant manager's style," "changes in shift schedules," the "new wage schedule" and "questions about certain benefits."

Kenneth Hanna is a supervisor for the Company. He claimed that prior to September 1, 1994, he was a "facilitator." He could not "remember" having a "conversation" with employee Kinard where he "told [Kinard] that [he] thought the Company would unbolt its machines." He was asked: "Did you ever threaten Kinard," and he responded: "not to my knowledge."

C. The Employer Threatens to Relocate or Close its Facility

Employee Randy Coy recalled that about 10 days before the representation election "facilitator" Deb Pelen "started talking about" the Union at work. Coy "asked her what she had against it." She replied:

> if you [Coy] don't think this plant will pick up and move if a Union comes in here . . . you got another thing coming . . . they could pick up and move to Mississippi anytime they want . . . .

Employee Troy Leader similarly recalled that Company Supervisor Austin Miller had the following conversation with him during work at the plant in late August 1994:

> He [Miller] come up to me [Leader] and he started, I was wearing Union buttons, and he was asking me why I supported the Union, and proceeded to tell me reasons why not to and why we didn't need a Union. . . . . [H]e told me that if a Union got in the Company would not be competitive and it would be forced to either be closed or move . . . .

Employee Philip Hoffman testified that he overheard Supervisor Miller state:

> If the Union got in the Company would probably close or move due to the competitive nature of the business.

Employee Deborah Oberdorff, an open union supporter, testified that Supervisor Gene Grim stated to her and her coworkers during mid August 1994 while on a break at the plant:

> [T]hey [Management] would see our cards . . . they would have to verify our signatures . . . they would close the doors and they would go down south . . . they were not going to settle for a Union . . . .

Oberdorff recalled that "facilitator" Deb Pelen later similarly stated at work that Management "would see [the employees' Union] cards," and "they would close up the doors and move down south" "if the Union came in."

Employee Lawrence McFatridge also testified that Supervisor Grim stated to him at the timeclock in the plant shortly before the representation election:

> I [Grim] am telling you, if this Union comes in . . . the Company is out of here . . . they will go south . . . .

In addition, employee Brian Snyder testified that "facilitator" or "supervisor" Ken Hanna stated to him at work during early September 1994, "if the Union gets in here they can move

down south . . . ." Snyder recalled the following conversation with Supervisor Gene Grim at work also during early September 1994:

> Gene Grim approached me [Snyder] . . . he asked my why I wanted a Union when the Company had done so much for me . . . why was I so upset with the Company that I feel I need a Union.

Snyder related his complaints to Grim, and Grim warned that "there was a company . . . that had a strike three years prior and . . . now they were closing . . . and that ought to tell me something . . . ." Grim told Snyder "that they could move." Grim, during this exchange, "poked" Snyder and was "very loud and vulgar." Grim later apologized to Snyder for this conduct.

Employee George Lighty similarly recalled "facilitator" Pelen repeatedly stating at work "during the campaign" "that the Company would probably move south . . . they might possibly move to Mexico because they had a plant in Mexico . . . ." Supervisor Gary White "also stated about the Company moving . . . the plant would move if the Union got in and they would not negotiate . . . ." See also the testimony Shane Mittel discussed above.

Employee Curvin Wolfgang testified that on the day of the election he was summoned to the "office" by Supervisor James Diffendarfer and told:

> I [Wolfgang] was about to take a vote . . . I should be very serious about the vote . . . . it was a very serious matter . . . . the judgments I would make would have adverse effects on my future . . . if the Union were to come in here . . . . it would jeopardize the future of the chain works . . . Campbell Chain would no longer exist under the name of Campbell Chain but under some other name . . . .
> . . . .
> [T]he future of the Company would be jeopardized if the Union were to come in . . . .

Bernard Koehne, the Employer's director of employee relations, claimed that "we got a little feedback that there was a feeling among employees that Cooper might move the plant south" and "we never could figure out where that came from." Koehne generally denied that he or any Management representative ever "gave any indication that Cooper was looking to relocate . . . ." Koehne acknowledged, however, that "nobody from Management ever told the employees flat out we have no intention of closing this plant" as part of its effort to combat this existing "air of negativism."

Company Manager David Bowman testified that "in the first week of September 1994" he addressed a meeting of assembled employees. A "purpose" of this meeting, assertedly, was "to assure employees our business was very strong." Bowman claimed that there was no "suggestion" that "Cooper intended to move or relocate the Campbell plant from York.". Another representative of the Employer, Mike Fallon, who addressed the assembled employees, according to Bowman, also did not "talk about the possibility of closing or relocating . . . ."

Gene Grim, a supervisor for the Employer during the Union's organizational campaign, testified that he had been instructed by Management that "we were not supposed to talk about the Union unless asked questions by the employees" and he assertedly "heeded" that "advice." See R. Exh. 14. He claimed that employee Oberdorff later "asked" him "if the Company . . . got . . . to see the Union cards once they were signed," and he told her "they did" because he had been "told" by his "boss" that the Company "would get to verify signatures." He later discovered that his "information" was "incorrect," but he did not "do anything to remedy the situation." He also discussed the Union with employee McFatridge at work, telling the employee that "I don't think we need a Union at Campbell Chain." He could not "recall" whether or not there was also a discussion "about the possibility of Cooper moving . . . south or somewhere else." Elsewhere, he admitted: "it's a possibility." Elsewhere, he admitted: "I told him that it's always a possibility that they could move a plant for whatever reasons." He denied, inter alia, other coercive statements attributed to him. He also admitted discussing with employee Snyder the Employer's retirement benefit and "we both sort of got loud with each other." He subsequently "apologized" to Snyder "for getting loud and boisterous."

James Diffendarfer, a supervisor for the Employer, denied, inter alia, threatening employee Wolfgang with plant closure if the Union won the representation election. He could not "recall" showing Wolfgang a "facsimile ballot" which he had been carrying around during the Union's campaign. And, Supervisor Gary White denied, inter alia, telling employee Lighty that "the plant might move south."

Austin Miller, a supervisor for the Employer, claimed that he too had been instructed by Management as to "what he could or could not say" to the employees. Nevertheless, he "did continue to talk about the Union with the employees." When asked "did [he] raise the subject," he responded: "not that I am aware of . . . I'm not really sure . . . I can't answer that . . . ." Elsewhere, Miller testified that he and employees, including Troy Leader,

> were talking about the Union . . . . I [Miller] said we don't need a third party to help us run our plant . . . they read the newspapers [and] can see what's going on . . . I [made] reference [to] the uncertainty of the [York] Caterpillar plant . . .
> they could move . . . there has been a lot of rumors [that] they were going to move . . . .

Miller was admittedly "aware that Cooper has other plants in Cannonsburg, Pennsylvania that closed." Miller admittedly had "as many as 50 or more conversations with employees and talked about similar issues . . . ."

Former "facilitator" Debbie Pelen testified that she could not "remember" whether "the subject of Union cards" was "discussed" at a "particular meeting" with employees, and that she did not "believe" that she told employee Oberdorff "that the Company would see who signed cards." Pelen also could not "remember a direct conversation" with employee Lighty "with regard to his views" about the Union. She then denied, inter alia, telling Lighty that she "thought the plant would move south." Elsewhere, she testified:

> I [Pelen] believe the only time I ever said about the Company going south was that they would move into some plant that I saw in [a] newsletter.

Elsewhere, when asked if she had ever "threatened" another employee that the "Company would move to Mississippi," she responded: "I can't tell you that . . . I don't know that."

Supervisor Kenneth Hanna, as noted above, testified that he was a "facilitator" prior to September 1, 1994. Hanna claimed that employee Snyder had "asked" him "what do you think if

the Union would get in," and Hanna responded that "in [his] opinion" Snyder "would lose out."

D. Threats of Job Loss and Other Reprisals, Surveillance, and Related Conduct

Employee Arlie Nafziger, an open union supporter, testified that shortly before the representation election "facilitator" Ken Grove approached him in the plant and stated: "what am I [Nafziger] going to do for a job if the [Union] doesn't get into the shop." Nafziger "walked away."

Norman Haymen, a staff representative for the Union, testified that he had conducted a meeting of employees during the organizational campaign on August 7, 1994. He had been alerted that "facilitator" Grove was planning to attend the meeting. Haymen recalled:

> At the outset of the meeting and close to my [Haymen's] opening remarks I indicated to those present that this meeting was for . . . only employees who would be eligible to vote. It would not be open for supervisory or management people. I followed up with a direct dialogue with Mr. Grove . . . I asked him a few of the questions normally you would ask . . . to establish supervisory status . . . . [His] response was he had no authority to really do anything, he was just a regular worker. I informed him at the time that I would take him at his word, but if upon investigation I found out he was in fact [a supervisor] then we could not allow him to attend meetings in the future.

The meeting proceeded, discussing the Union's organizational agenda at the facility, with Grove present.

Employee Denise Caswell testified that she too had attended the August 7 union meeting attended by "facilitator" Grove. Later, Caswell and her coworkers attended a meeting at the plant. In the next room, "facilitators" Ken Grove and Deb Pelen, together with other Management representatives, were conducting a meeting. Caswell and her coworkers "could hear the whole meeting in the next room" "plain as day." Caswell testified:

> He [Grove] said that he was at a Union meeting, that the people were wondering what he was doing there . . . . Deb [Pelen] . . . want[ed] to know the names of all the people that were there that talked bad about [her] because [she] was out to get them . . . .

Employee Dorothy Goodling also overheard the above Grove-Pelen exchange in the next room—"they were very loud." She recalled overhearing Grove explain that the March 7 union meeting "was a bitch session" and Pelen "wanted to know what people were at that meeting."

Kenneth Grove, a "facilitator" during the Union's organizational campaign, testified that he "attended what we called fact meetings" conducted by Management, and that he had been "instructed" that if the employees "would ask you a question" about the union campaign "you could answer it to the best of your ability and things of that nature." He also attended the Union's March 7, 1994 union meeting because he felt that as an "hourly employee" he could. He was questioned there, as noted above, about his status and then permitted to remain at the meeting. He later met with Management representatives at a "fact meeting." Present at this meeting were "facilitator" Deb Pelen and representatives "from Houston." He denied, inter alia, that Pelen then "asked for the identities of people who were at the [Union] meeting." He did, however, state to Pelen and Management's representatives at this "fact meeting" that he had attended the March 7 union meeting, it was a "bitch session," and the employees were "complaining about manager of operations . . . Brindisi." He assertedly was not "aware" during his "fact meeting" that employees were holding a meeting in the next room.

In addition, "facilitator" Grove testified that shortly before the union representation election he had observed employee Nafziger "posting unauthorized [Union] literature . . . on the machines" and reported this to "coordinator" Larry Snook who advised Grove to tell Nafziger to "take" down the Union "literature." Grove also apprised Nafziger that the union "literature" was not "posted properly." He denied, inter alia, other coercive statements attributed to him by Nafziger.

Former "facilitator" Debbie Pelen testified that she had attended a "fact meeting" at the plant with "facilitator" Kenneth Grove and various Management representatives. The "word" "got around that Ken Grove [previously] had attended a Union meeting." Pelen "asked" Grove at the "fact meeting" "what the beef was" and he "said basically it was just a session where people brought out a lot of different things," it was a "bitch session." Pelen could not "recall" "asking" Grove "for the names of the individuals who attended the Union meeting" or "who had spoken poorly of" Pelen at the union meeting. Pelen claimed: "I don't remember any names that day." Pelen assertedly was not "aware" that "certain packaging department employees were [then] meeting in a nearby room."

E. The Employer Returns Employees to Their Straight 8-Hour Shifts and Permits Certain Employees to Change Their Shift Hours Shortly Prior to the Representation Election

Employee Troy Leader testified that prior to January 1994 he, together with other employees, worked 8 a.m. to 4 p.m. on the first shift; the second shift worked 4 p.m. to midnight; and the third shift worked from midnight to 8 a.m. He, together with his coworkers, then had a "20 minute paid lunch." However, during late January 1994, the Employer "changed the hours" so that the first shift ran from 7 a.m. to 3:30 p.m.; the second shift ran from 3 to 11:30 p.m.; and the third shift ran from 11 p.m. to 7:30 a.m. See G.C. Exh. 56. In short, the employees, by virtue of this January 1994 change, now "started an hour earlier" and now "had to punch out for a half hour lunch." They were no longer paid for their lunch period. This change affected a substantial number of the unit employees, and the employees "didn't like it" and protested to the Employer.

However, it was not until August 1994, shortly before the representation election, when the Employer posted a "shift overlap" notice (G.C. Exh. 44), apprising the employees, inter alia, that

> In an effort to reduce the amount of employees involved in a shift overlap, the Employee Task Team recommended that we return to the 20 minute paid lunch . . . .

The "criteria required to qualify for paid lunch" were assertedly "developed" by the "Committee" and are set forth in the notice. (Ibid.) A substantial number of unit employees were thus affected by this August 1994 change. See G.C. Exh. 58.

Leader explained that he had not been notified "about this change before [he] saw the [August] notice posted." Leader, because of a "baby-sitter" problem, then attempted to negotiate with Management a return to "7 to 3 instead of 8 to 4." He was initially told that if he "got everybody to agree on that they

would allow it." Later, he and certain coworkers were permitted to work "7 to 3," "3 to 11," and "11 to 7." Leader, and his coworkers, however, "still had the [restored] paid lunch" as announced in August 1994.

Employee Philip Hoffman testified that he had been instructed during July 1994 by his Supervisor Walt Green to go to and serve on the "Employee Task Team" which had been created to "correct the hours of the shop"; "they [Management had previously] changed our hours [to] . . . 7:00 to 3:30 with a half hour punch out and . . . there was a shift overlap . . . ." This "Task Team," which included selected rank-and-file workers and upper Management, met once a week "in the executive office." Management's representative "ran the meetings." Hoffman later observed General Counsel Exhibit 44, quoted in part above, posted on the bulletin board; he had never seen this material before; these "documents" were not presented to the "Team." Further, he recalled that no similar "Task Force or Team" had ever been "created before" or "since" by Management.

Hoffman explained on cross-examination that "most employees were unhappy about that change" instituted by Management during January 1994; that the "meetings" of his "Task Team" occurred in July 1994; that hourly employees thereafter reported back to Management and the "Task Team" about "what other employees thought about who should get the paid lunch"; that Management "established [the] criteria based upon what . . . had [been] reported or suggested"; and that, subsequently, "the notice" changing employees' hours was "posted." The "meetings" attended by Hoffman occurred during July, before the filing of the representation petition. The subsequent "notice," however, was posted after the filing of the "petition." In addition, Hoffman explained that he had complained to Management about the initial January 1994 change in hours of work "shortly after it was announced and implemented," and Management's representatives then had responded: "Can't do anything about it."

Company Manager David Bowman testified that prior to January 1994 "some employees had paid lunch and others did not." The "number of employees who received the 20-minute paid lunch expanded." Management determined in January 1994 that "everyone would punch out for lunch and we would have an eight and one half hour day" with "overlapping shifts." This "change" affected "all hourly employees." A number of employees became "upset" and there was "dissension." See R. Exh. 7. Nevertheless, Management "remained committed" to this "change" because, as Bowman put it, "we thought it was in the best interest in the development of teams." However, during "late July or early August 1994," Management created a "Task Force" including employees and Management, to study this problem and make recommendations. Bowman explained: "[T]hey were charged with going back to their work areas and soliciting comments, information and suggestions from other employees in their areas."

Bowman identified General Counsel Exhibit 58 as a "Task Force" "proposal for areas that would remain on paid lunch and those that . . . would not." This "proposal" was "implemented" during "late July or early August" 1994. See also G.C. Exh. 44 and Tr. 1945 to 1950. Bowman was asked "why this change was made in August 1994," and he responded:

> we had made every effort possible to make the overlap work . . . the employees were still disgruntled . . . [and] we met with the employees who determined the criteria . . . .

Bowman asserted that "there was no relation to the Union" or the "ongoing campaign." Bowman added that in the past the Company "has accommodated employees with regard to hours of work . . . depending on their particular situation . . . ." See Tr. 1953 to 1955.

Michael Bobay, the Employer's "manager of teams" during the above period, recalled that employee Leader "had voiced concern" to him when Management "changed [back] the hours" during August 1994; Bobay's "response" was that if Leader could get his "entire group" or "team" to agree to a "change in hours" the Employer would "accommodate" him; Leader could not thereafter get the "entire group" to "agree"; however, Bobay still allowed a partial "accommodation" for the three employees who had "agreed." Bobay claimed that such "accommodations" had been made in the past.

F. The Employer tells Employees Shortly Prior to the Election that Their "Red Circle Rates" will be Eliminated

Employee Denise Caswell testified that shortly before the representation election, she and coworkers were in Supervisor Terry Wallace's office at the plant discussing a "work related problem" "unrelated to the Union campaign." One of the other employees present then stated:

> She understood why the people want to get the Union in because she didn't feel . . . . the problem was [being] taken care of properly . . . . He [Wallace] got angry. He said that we would be surprised that the Union couldn't do for us . . . what we thought they could do for us. . . . He said that off the record we would be getting a pay raise . . . . they were going to drop . . . the red circle . . . and give us a three level pay system . . . .

Caswell explained that the "red circle" was the existing "cap" on her and her coworkers' "hourly wage scale."

Employee Dorothy Goodling testified that she had attended a meeting with Supervisor Wallace during late August or early September 1994; "we started talking about our red circle" or "top" of employee hourly wage grade scales; Goodling was then "at the top of [her] labor grade"; and Wallace said:

> Well, I [Wallace] could tell you now, that's going to be dropped.

Goodling noted that later, during October 1994, management in fact "dropped the red circle."

Company Supervisor Terry Wallace was asked "did you have occasion to speak to Caswell and Goodling on the subject of red circle rates." He responded: "not that I recall." Elsewhere, he generally denied, inter alia, "ever telling Caswell and Goodling that the red circle rates would be eliminated so that they would not support the Union."

G. The Disciplining of Employee Stanley Kinard and Related Conduct

Employee Stanley Kinard testified that he was hired by the Employer in 1973 and currently works as a machinist in the maintenance department. He became active in the Union's organizational campaign starting about early April 1994. He served on the Union's organizing committee, attended union meetings, prominently displayed union buttons and solicited the union memberships of his coworkers. He recalled, as noted above, "facilitator" or "supervisor" Ken Hanna stating to him at work during August 1994,

> if the Union would come in here . . . they could and would unbolt these machines from the floor so fast and move out of here it's not funny . . . .

He responded stating that "if this Company could make money some place else they'd be out of here today anyway."

Kinard also recalled, as noted above, Company Representative Koehne addressing assembled employees shortly before the representation election. He testified:

> Mr. Koehne stated . . . when we come in to negotiate a contract . . . we give you the bottom line . . . you can take it or leave it . . . .

He raised his hand and asked Koehne, "you mean you don't have to sit down and negotiate in good faith." Koehne responded: "[W]e give you the bottom line and you either take it or you go on strike." He again raised his hand and asked, "isn't there collective bargaining . . . while we work towards an agreement . . . beneficial for both sides . . . ." Koehne responded: "that wouldn't serve any purpose . . . you take the bottom line or you go on strike . . . ."

Kinard also recalled Supervisor Don Danley questioning him about wearing "so many [Union] buttons." Danley asked "why do you want a Union in here . . . ." He responded that he wanted some uniform "policy." Danley replied: "you ought to just hold off . . . wait until you see the October package . . . ." Later, after Management gave the employees its "October package," Kinard said to Danley, "what did you think of the October package," and Danley responded:

> [T]he Company would have given you a lot more had it not been for all the charges pending against it with this Union drive and everything going on with the court hearing and stuff . . . .

Kinard next addressed the sequence of events culminating in his suspension. He and Michael Livelsberger, a lead man at the plant, had been "friends for 30 years," they "grew up in the same town," "ran around together," "dated some of the same girls," and would "meet . . . on social occasions." On May 23, 1995, Livelsberger "was filling in for a supervisor" at the plant. Livelsberger "asked" Kinard "to fix a shaft so they could keep [a machine] running." Kinard did the job in about a half an hour. Kinard later received the "work order" for this job which indicated that he only had "polish[ed] the shaft." Kinard explained that "to polish the shaft would have taken two minutes . . . ." Kinard went back to Livelsberger and said:

> Mike . . . the work order has polish on it . . . I [Kinard] actually had to set this shaft up, indicate it and recut it . . . you want me to change this from polish to recut . . . He [Livelsberger] sort of laughed a little bit and said no . . . it's the same thing . . . I said, but you'd know the difference between polish and cutting if I was to cut your tires . . . I said, but since we're friends I would use a valve stem puller and pull your valve stems out because I wouldn't want to ruin your tires . . . they cost a lot of money . . . [Livelsberger] maybe chuckled a little bit [and] that was about it . . . .

Kinard, within an hour, was summoned to Manager Bowman's "office." Also present was Management Representative Jessie Eyre. Bowman said that "we are here to discuss the charges that you threatened to cut Mike Livelsberger's tires." Kinard said that "this is a joke"; "there was nothing serious about this at all"; "we've carried on many times in the past about different things"; "anybody knows that Livelsberger was just a clown all the time"; "they're overlooked because they're just a joke." Bowman, however, said "no" "this is a serious matter." Kinard said:

> I did say those words . . . if you are looking for something to hammer me on . . . you have it . . . but I didn't threaten Mike . . . I think [this is] about my Union buttons [which he then wore on his hat] . . . .

Later that day, Kinard was apprised by Management that he was temporarily suspended and "escorted out of the plant."

Thereafter, on June 5, 1995, Kinard was notified in writing and in person by Management (G.C. Exh. 76) that he was being given a 30-day suspension for the above incident. Management stated:

> Our investigation determined that on May 23, 1995, you threatened to slash the tires of a maintenance leadperson who had made a work assignment to you which you apparently took exception to . . . . In reaching our decision we have considered the fact that you had received a prior warning dated December 14, 1989 for a similar incident for directing abusive language against another employee and threatening him [see G.C. Exh. 74(j)]. Moreover, in the course of our investigation, it was determined that other threats have been made by you during your course of employment with the Company . . . .

Kinard could not "remember getting a warning" for the cited 1989 incident. He knew of no one else who has been suspended by the Employer without pay for 30 days "for any incident," and he has had no other "disciplinary action taken against" him. See General Counsel's Exhibit 90, the Employer's "Work Rules and Regulations," and General Counsel's Exhibits 89(a) to (v) consisting of various employee writeups and disciplinary actions issued by the Employer to other employees, including, inter alia, a "warning" for "abusive language toward" a coworker and telling a "facilitator to mind [his or her] own business"; a "reprimand in lieu of suspension" for "harassment of a fellow employee"; a "reprimand" for having "on several occasions threatened to use bodily harm toward a fellow employee"; and a 3-day "suspension" for "refusal to obey orders" and "leaving work without permission." See also Tr. 1871 to 1872.

On cross-examination Kinard testified:

> Q. And didn't Bowman also tell you that you were being accused of throwing steel at [employee] Chris [Brock] . . . back in 1989 . . . . ?
>
> A. I did not throw steel at Chris Brock.
>
> Q. Did Bowman tell you that was the reason that you were being given a reprimand?
>
> A. He asked me if I had thrown steel at Chris Brock. . . I said no I didn't. I took the steel which he threw in my box and I threw it back against the wall where it belonged on the rack . . . .

Kinard also testified:

> Q. . . . . Had you threatened to burn down or blow up a doll house that [employee] Gary Hirsch had been building for his child?
>
> A. Not in a serious manner.
>
> Q. That was another one of your jokes?
>
> A. We joke constantly.

Kinard denied "threatening" other coworkers, and explained that the above exchange with coworker Hirsch, a friend for some 12 years, occurred over 5 years ago.

Manager David Bowman testified that Personnel Manager Harold Anstine had informed him about the Kinard-Livelsberger incident, and he was directed to investigate the matter. Bowman, together with another Management representative, Jessie Eyre, questioned Kinard in his office. There, Kinard admitted stating what Livelsberger "had said." Kinard explained that he was "joking." According to Bowman, Kinard did not then make any reference to "his Union activities." Bowman then indicated to Kinard that "we would report the facts to Harold Anstine." Later that day, Anstine informed Kinard that "he was suspended indefinitely pending further investigation." The Employer subsequently determined to suspend Kinard for 30 days. Bowman claimed that this "decision" was "based upon the investigation findings that there had been other threats . . . ." "Termination" was "considered," however, it was finally decided only to suspend Kinard for 30 days because "he was a long term employee." Bowman insisted that Kinard's union activities played no "role" in making this "decision."

Bowman explained on cross-examination that Anstine had apprised him that Kinard would be suspended "indefinitely pending investigation." Anstine apparently had "communicated" with corporate headquarters. Bowman had never previously been "involved in disciplinary actions" "in all 18 years" of service. He also had never known Kinard "to cut anybody's tires" or "to hit anybody." Anstine later proceeded with an "investigation" as to "whether there were any other instances with regard to Stan." Bowman admittedly did not make the "30-day suspension determination."

Bernard Koehne, the Employer's director of employee relations, recalled that employee Kinard had been "pointed out" to him during the Union's campaign "as a person who always wore a lot of Union buttons." Koehne, however, could not "recall" whether Kinard had asked him "questions" during one of his meetings or speeches to the assembled employees.

Donald Danley, a supervisor for the Employer, claimed that, as instructed, he only "spoke" to employees "about Union activity" "if they would open the discussion" and then he would "give [his] opinion." Elsewhere, he recalled that employee Kinard "always wore [Union] buttons and shirts and hats," and on one occasion he asked: "do you have one on the head of your dick." Kinard responded: "I didn't think of that . . . if I had I'd put it on . . . ." He was asked: "Did you talk to Kinard about the October [pay increase] package." He responded: "no, I don't think we [did], we might have discussed it, but I don't recall that all." He later denied, inter alia, making any "promises" or coercive statements because "you can't do that." He later acknowledged telling Kinard with respect to the "package" that "there are things we couldn't do because of the Union situation." He later acknowledged telling Kinard that "we're working on a package . . . a new pay system . . . ."

Harold Anstine, employee labor relations manager for the Employer, was personnel manager during the union campaign. Anstine recalled that Livelsberger had informed him during May 1995 that he, Livelsberger, "thought he was threatened" by employee Kinard. Anstine conferred with Bowman and Eyer, and "asked them to talk with Kinard about the incident." Anstine later got their "statement" and discussed the matter with Director Roger Dick. Management determined "to place [Kinard] on suspension pending further investigation." Anstine so notified Kinard. Anstine next testified:

> The next morning I was told that there were two or three other people in the machine shop area that had similar types of run ins with Kinard.

According to Anstine, Kinard's personnel file showed that "back in 1989 he had a reprimand where he had threatened another employee." In addition,

> Livelsberger told me there were several people in the machine shop that wanted to talk to me . . . they had similar run ins. . . . In total I talked to them plus a half dozen extra . . . altogether maybe nine or ten people . . . .

Anstine asserted that "this bullying and threatening that was done by Kinard was serious enough that he should be terminated." However, a "decision" was made by "division" or "headquarters" that Kinard would only get a 30-day suspension "due to the length of his service." Anstine nevertheless acknowledged that "that's a long suspension by Campbell Chain's standards." Management, assertedly, "wanted to make certain that there was no misunderstanding on anybody's part that that sort of action would not be tolerated." When asked if Management "could have made that same understanding with a shorter suspension," Anstine responded: "That's possible . . . I don't know." Anstine admittedly "knew" that Kinard was "a Union supporter," however, assertedly, Kinard's union activity was not "a factor in the decision."

Anstine, on cross-examination, acknowledged that he did not "meet with Kinard"; he assertedly spoke with employees Robert Herman and Faye Beaverson about "run ins with Kinard" and thereafter never asked Kinard about these employee "complaints" and, in short, "took their word for it"; and "nobody has ever been suspended for such a long period of time . . . ." Anstine was then questioned about disciplinary actions taken against other employees. Thus, for example, "Hohenadel accused Meyers of threatening to punch him with a screwdriver and throw him in the . . . waste treatment thing"; Meyers "was suspended for a day" and Hohenadel was given a "reprimand" for "calling Meyers an idiot." Gary Wilders "threatened to hit a supervisor" and was "given an in house suspension." Anstine acknowledged that "I don't know what an in house suspension is." Michael Shoff "received a reprimand" after having "on several occasions threatened to use bodily harm toward a fellow employee." In that case, Anstine assertedly "got the two guys together," Shoff "apologized" and "we issued a reprimand." No effort was made to "bring Livelsberger and Kinard together in a similar situation."

Michael Livelsberger, a leadman, testified that he had reported the above incident with Kinard to Management "because I felt threatened." He was, at the time, "filling in as a supervisor."

H. The Employer tells Employees After the Election that Changes in the Pay System will not occur Because of Union Charges, and Places the Onus for Denying an Employee Performance Raise on the Union

On September 30, 1994, some 2 weeks after the representation election, Manager Bowman wrote the unit employees (G.C. Exh. 24(b)):

> It has been the custom at Campbell to hold employee meetings to announce the annual wage [rate] increase which typi-

> cally became effective the first Monday of October. However, until the result of the Union election has been certified by the National Labor Relations Board, I am concerned about any actions which might result in further charges or objections from the Union. In light of this, I have chosen to write this letter trusting that you will understand my concern.
>
> Despite the unusual circumstances which exist at this time, I believe that it is only fair to follow our past practice of announcing the annual wage increase. Therefore, effective October 3 . . . there will be a 4% general increase in each hourly employee's base rate . . . .

However, as employee Dennis Leber testified, the Employer also conducted among the unit employees "a feedback meeting from an attitude survey" after the representation election and, there, "put . . . on a screen" the following notice (G.C. Exh. 9):

> Feedback Meetings
>
> Advice of our legal council [sic] is to not implement any pay system changes at this time because of the filed Union charges.

In addition, employee John Switzer testified that during May 1995 Supervisor Jim Diffendarfer informed him of his "appraisal" or "review" and stated that he, Diffendarfer, "would check . . . to see about a raise." Switzer, under the existing wage system for maintenance employees, was apparently not entitled to such a raise. Later, Diffendarfer apprised the employee:

> He [Diffendarfer] said that as far as a raise goes, it was approved down through Houston and Raleigh, but the attorney said no because of the Union business.

See also the testimony of employee Kinard, discussed above, where Kinard was told in connection with the Employer's October 1994 wage increase package:

> [T]he Company would have given you a lot more had it not been for all the charges pending against it with this Union drive and everything going on with the court hearing and stuff . . . .[6]

Company Supervisor James Diffendarfer testified that he

> told [employee Switzer that] corporate [headquarters] said that they did not want to make any major changes [in compensation] at this time and that we would work with the present program to try to bring [him] up to the present level . . . .
>
> Diffendarfer assertedly "did not blame the Union" for this determination.

Roger Dick testified that he became director of chain operations at the Employer's York facility about mid-November 1994. He noted that David Bowman had replaced former Director Fred Brindisi during the Union's campaign as an "interim appointment" and that he later became Brindisi's permanent replacement with Bowman becoming "manager of operations." He recalled that on or about January 1995 the Employer conducted "opinion surveys" among its employees "to bring issues forth from employees," and "feedback meetings" were later held with the employees "once the surveys [came] back." At these "feedback meetings" there were "issues . . . related to [employee] wages" and "the wage system" with "a number of perceived inequities"; and Dick "wanted to have input from the folks on that." Dick, however, assertedly apprised the assembled employees at the "feedback meetings" that "we may not be able to deal with it right now" because of the pending representation proceeding; and employees were notified, as depicted on General Counsel Exhibit 9, "Advice of our legal council [sic] is to not implement any pay system changes at this time because of the filed Union charges." Dick was asked how did he "reconcile" the Employer's position on "pay system" changes with the Employer's position on pay raises granted previously to "team" and non-"team" members "under or in conjunction with team systems" during the pending representation proceeding. He generally claimed: "I view them as different."

On cross-examination Dick testified:

> Q. Did you give any further explanation [to the assembled employees] other than to just read this [G.C. Exh. 9] to the employees?
>
> A. Simply saying what I already stated that we wanted to get their feedback so that at some future time we wanted to be able to address these concerns.
>
> Q. But did you give them any further explanation as to the reason that you were not doing any implementation at the time other than what you read to them on this overhead?
>
> A. No.

Harold Anstine, employee labor relations manager for the Employer, as noted, was personnel manager during the Union campaign. He recalled that Supervisor Diffendarfer spoke to him about employee Switzer's inability to move to a "higher step" under the "maintenance trade program" of compensation. According to Anstine,

> After we all agreed [at York] what would be an appropriate fix to what was wrong with the system, I [Anstine] contacted the personnel people at our division headquarters in Raleigh. . . . [They] indicated that as a result of the critical time period that we're in right now relative to these filed charges against us not to make any substantial changes to our pay system . . . .

Anstine assertedly related this information to Diffendarfer.

I credit the above testimony, cited and detailed in sections A through H, supra, of Dennis Leber, Randy Coy, Shea Hurley, Jeffrey King, Brian Snyder, Jeffrey Eshelman, Scott Sargen, Linda Flaharty, George Lighty, Loy Crayley, Richard Keister, Ray Wintermyer, Jeffrey Beam, Lawrence McFatridge, Greta Shimmel, Shane Mittel, Stanley Kinard, Troy Leader, Philip Hoffman, Deborah Oberdorff, Curvin Wolfgang, Arlie Nafziger, Denise Caswell, Dorothy Goodling, Norman Haymen, and John Switzer. As demonstrated above, their testimony is in substantial part mutually corroborative of the Employer's course of conduct in resisting its employees' attempt to obtain union representation. Their testimony is also substantiated in significant part by acknowledgments and admissions of Respondent Employer's witnesses as well as by uncontroverted documentary evidence. Their testimony also withstood the test of thorough and extensive cross-examination. And, relying on demeanor, they impressed me as reliable and trustworthy witnesses.

On the other hand, I was not impressed with the testimony of David Bowman, Michael Bobay, Myles, or Michael Smeltz,

[6] See also the testimony of employee Richard Keister, Tr. 1086 to 1087.

Bernard Koehne, William Fuller, James Diffendarfer, Gary White, Charles McMahon, Terry Wallace, Charles McCloskey, Gene Grim, Austin Miller, Debbie Pelen, Kenneth Grove, Lorna Clark, Donald Danley, Kenneth Hanna, Roger Dick, Harold Anstine, Michael Livelsberger, and Jessie Eyer. Their testimony was at times unclear, incomplete, vague, unsubstantiated, shifting, and contradictory. They did not impress me as reliable or trustworthy witnesses. Thus, for example, I find totally incredible on this record the attempts by Bowman, Bobay, Smeltz, and other Employer witnesses to demonstrate that the Employer's sudden granting of pay raises and other benefits to both "team" and non-"team" employees shortly before the representation election was coincidental to and for legitimate business reasons totally unrelated to the Union's intense organizational effort then under way. Indeed, although management admittedly had wanted "uniformity" in implementing its "team" "criteria" and previously had not made any plans for including non-"team" personnel in this implementation, and although Management had "dragged its feet" for many months in developing these "criteria," it suddenly partially implemented this program shortly before the representation election and included within the program non-"team" personnel. I am persuaded, as discussed below, that management, in response to solicited employee complaints, was by this and related conduct promising and granting benefits to its employees in an attempt to buy employee votes in the representation election.

In addition, I find equally incredible on this record management's assertions that its representatives did not engage in the various coercive conduct attributed to them by the employee witnesses, as documented above, because in effect management had instructed its representatives not to engage in such conduct. The credible and thoroughly substantiated testimony of the above employee witnesses shows that management's representatives had in fact repeatedly threatened not to negotiate in good faith with the Union if elected by the employees, had repeatedly threatened plant relocation or closure and related reprisals if the Union won the election, had repeatedly solicited employee grievances and made promises of benefits to the employees to dissuade them from voting for the Union, and had repeatedly engaged in related coercive conduct. I reject as incredible in this respect Manager Bowman's assertion that a "purpose" of his preelection meetings with unit employees was to "assure our employees our business was very strong." As Company Official Koehne acknowledged, "nobody from Management ever told the employees flat out we have no intention of closing this plant" as part of its effort to combat this existing "air of negativism." In like vein, I reject as totally incredible on this record management's assertions to the effect that it returned its employees to straight 8-hour shifts and restored their paid lunchbreaks and told employees that it was eliminating their "red circle rates" "caps," all shortly before the representation election, for legitimate business reasons totally unrelated to the Union's organizational effort. Further, after the representation election, as demonstrated above, management blamed the Union and its pending charges in this proceeding for not granting greater benefits to the employees and for not correcting cited inequities in its pay system.

In addition, with respect to the postelection disciplining of employee Stanley Kinard, I am persuaded here that Management, in an unprecedented and unusual manner, imposed a 30-day suspension on this employee, because he was an active and open union supporter. I reject as incredible and pretextual Management's asserted nondiscriminatory reasons for this unprecedented and unusual treatment of this employee.

In sum, as discussed further below, I find and conclude here that the testimony cited and detailed above of Dennis Leber, Randy Coy, Shea Hurley, Jeffrey King, Brian Snyder, Jeffrey Eshelman, Scott Sargen, Linda Flaharty, George Lighty, Loy Crayley, Richard Keister, Ray Wintermyer, Jeffrey Beam, Lawrence McFatridge, Greta Shimmel, Shane Mittel, Stanley Kinard, Troy Leader, Philip Hoffman, Deborah Oberdorff, Curvin Wolfgang, Arlie Nafziger, Denise Caswell, Dorothy Goodling, Norman Haymen, and John Switzer reflects a more thorough, reliable, and trustworthy account of the pertinent sequence of events than the testimony of David Bowman, Michael Bobay, Myles or Michael Smeltz, Bernard Koehne, William Fuller, James Diffendarfer, Gary White, Charles McMahon, Terry Wallace, Charles McCloskey, Gene Grim, Austin Miller, Debbie Pelen, Kenneth Grove, Lorna Clark, Donald Danley, Kenneth Hanna, Roger Dick, Harold Anstine, Michael Livelsberger, and Jessie Eyer.

Discussion

Section 7 of the National Labor Relations Act guarantees employees the "right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities." Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain or coerce employees in the exercise of" their Section 7 rights. The "test" of "interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed . . . [t]he test is whether the employer engaged in conduct, which it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." See *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946). And, Section 8(a)(3) of the Act, in turn, forbids employer "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . ."

Under settled principles of labor law, an employer violates the proscriptions of Section 8(a)(1) of the Act by coercively interrogating employees about their union activities; by soliciting grievances from employees in order to dissuade them from engaging in union activities; by promising employees a better wage and benefit package in order to dissuade them from supporting a union; by engaging in surveillance of or creating the impression of engaging in surveillance of employee union activities; by threatening employees with discharge, plant relocation, plant closure, or other reprisals for engaging in union activities or selecting a union as their collective-bargaining representative; by telling employees that the employer would see their signed union authorization cards; by telling employees that collective bargaining would be futile because the employer would not negotiate in good faith with a union selected by them; by telling employees after a representation election that the employer would have given them a greater wage and benefit package if a union had not filed charges against it with the Board; by placing the onus for the employer's lack of pay system changes on a union for having filed charges with the Board; and by similar or related coercive conduct. See gener-

ally *Overnight Transportation Co*., 296 NLRB 669 (1989), enfd. 938 F.2d 815 (7th Cir. 1991); *Golden Eagle Spotting Co*., 319 NLRB 64 (1995); *Brother Industries*, 314 NLRB 1218, 1230 (1994); *Heck's, Inc*., 273 NLRB 202, 205–207 (1984); *Flexsteel Industries*, 316 NLRB 745 (1995); *Q-1 Motor Express*, 308 NLRB 1267 (1992); *Parma Industries*, 292 NLRB 90, 91 (1988); *Hovey Electric,* 302 NLRB 482 (1991).

Under equally settled principles of labor law, an employer violates the proscriptions of Section 8(a)(1) and (3) of the Act by granting substantial hourly wage increases and bonuses to its employees shortly prior to a representation election in an attempt to discourage membership in a union; by similarly permitting employees to return to a straight 8-hour shift and restoring their paid lunchbreak and, further, permitting employees to change the hours their shift began and ended, all shortly prior to a representation election; by discriminatorily disciplining an open and active union protagonist; and by denying a performance wage increase to an employee and "placing the onus for that decision" on the union. See generally *NLRB v. Exchange Parts Co*., 375 U.S. 405 (1964); *NLRB v. WKRG–TV*, 470 F.2d 1302 (5th Cir. 1973); *NLRB v. Styletek*, 520 F.2d 275 (1st Cir. 1975); *Horizon Air Services*, 272 NLRB 243 (1984); and cases cited, supra.

In the instant case, the Union initiated its campaign to represent the Employer's some 393 production and maintenance employees at its York facility during March 1994.[7] Thereafter, by July 25, 1994, 224 of the 393 unit employees had signed or otherwise executed union authorization cards.[8] The Union requested recognition from the Employer as the duly designated collective-bargaining representative of the unit employees on July 21, 1994, and the Employer refused. Consequently, the Union filed a representation petition with the Board on July 25, 1994, and a Board-conducted representation election was scheduled for September 16, 1994. The Employer, in resisting this organizational effort, as demonstrated above, repeatedly solicited employee complaints and grievances, and repeatedly promised and granted employees pay raises and other increased benefits in an attempt to buy their votes in the scheduled representation election.

Thus, employee Dennis Leber credibly testified that the Union's organizing campaign started during March 1994. He worked on the "Union organizing committee," "handed out Union cards" and made "house calls during the campaign." He was asked "what prompted [his] involvement" in the Union's organizing campaign, and he explained that he was "upset with the team concept" which had been instituted by the Employer during 1992 and 1993—the employees had become dissatisfied "because it wasn't working . . . ." Leber had "first heard" about the Employer's "team concept" at work during 1992. Later, during September or October 1993, he was placed on the Employer's newly instituted "prep polish team." Under this "team concept," employees initially would receive a "team training rate" of hourly compensation; after they demonstrated that they were "competent in performing an individual function and training in other team areas" they would get a higher "individual team rate" of hourly compensation; and, ultimately, they would get a higher "certified team rate" of hourly compensation when they demonstrated that they were "competent in performing and training all job functions within the designated level within the team," as well as a "$100 bonus . . . upon achieving the certified team rate." However, the above "team rates" of hourly compensation, although introduced by 1993, were concededly not implemented until shortly before the September 1994 representation election.

Employee Randy Coy credibly recalled the Employer's institution of the "team" and "new wage system" by October 1993. Coy was a "training star point" on the "prep polish team." Coy was responsible

> to see that everybody was trained properly in their department to go to their individual rate and to see to it that if anybody wanted to move into the team rate . . . [to] get them cross-trained . . . .

Coy explained, however, that he was not sufficiently "trained" or "assisted" in fulfilling these responsibilities. Employees repeatedly asked at "team meetings" and "in the shop" "about getting team raises" and "when it was going to happen." He responded that "I [Coy] am trying the best I can to get it moving." Coy testified:

> Q. . . . .Was anything done by the Company to implement any of those forms or things on that document ["team skills inventory form"] during the span of time from the fall of 1993 until the election of 1994?
>
> A. No, there was not. . . .

Coy recalled that it was not until August 1994 when Company "facilitator" Deb Pelen

> came to me [Coy] and asked me to get everybody on our team checked off as soon as possible . . . they want them checked off and to team rate as soon as possible . . . get everybody together and have them checked off as soon as possible . . . .

Coy "did exactly what she [Pelen] told me." And, "as a result of this check off procedure" some six to eight employees on his "team" were given "raises" shortly prior to the representation election. Coy never received any "explanation" from Management as to "why it was taking from 1993 to 1994 to implement this program."

Employee Jeffrey King, one of the employees who also had suddenly received a pay raise under the "team concept" shortly before the representation election, credibly noted that he "was able to do those same jobs" required to obtain such a pay raise under the "team concept" "a year before that." And, employee Brian Snyder also credibly testified that he was placed on the Employer's "specials team" created in 1993 and made its "quality star point"; he too "kept asking when we could go to this [next] level" under the "team concept" and thus "get our top pay"; and, in his view, he was "already trained" and he was "qualified for such a raise under the team system . . . four months after [he] had started the job" in September 1993. It was not until about August 1994 when management evaluated his and his coworkers' "qualifications" in order to determine whether they possessed the required "skills." His "individual rate pay increase" under the "team concept" was thereafter made "effective August 15, 1994."

[7] It was stipulated that there were a maximum of 393 production and maintenance employees in the appropriate unit as of July 31, 1994. See Tr. 1447 to 1453.

[8] See Appendix A annexed hereto, containing a list of the 224 unit employees who had signed or otherwise executed union authorization cards on the dates indicated or by July 25, 1994, with pertinent Exh. and transcript references.

Further, employee Jeffrey Eshelman was placed on the "wire prep team" by October 1993. He credibly testified that "once you could prove that you knew how to do three jobs you moved to the top." He in fact "could do all three of the jobs" by October 1993. Consequently, he questioned Management "why [he] couldn't go to the top right away," however, "they basically dragged their feet . . . ." Finally, shortly before the union representation election, he and two coworkers who were similarly qualified were told that they "were going to move to the top." He then received an hourly increase and also a $100 "bonus."

Employee Scott Sargen was not a member of any "team" during the pertinent time period. However, he credibly recalled that during August or September 1994, shortly before the representation election, he and various coworkers were tested as to their job skills and then suddenly granted pay raises. Sargen testified:

> I [Sargen] heard guys informing that they were getting raises. We heard that if they know their job then they will get their pay raise on up to the top. . . . [Employees were told that] if we know the job then we'll get the raise. . . .

Sargen, like the various "team" members, was tested and then received a substantial hourly rate increase shortly prior to the representation election. As stipulated, some 13 of the approximate 30 employees named in paragraph 23 of the amended complaint, who admittedly had received substantial pay raises shortly prior to the representation election, were not in fact "team" members.

Employee George Lighty, placed on the Employer's "GBSR team," credibly related how he had received a $100 "bonus" during "early September" 1994. He did not "expect to get a raise at that time," because he did not "know all the job skills" on his "team." He testified:

> [Supervisor Austin] Miller came out with an envelope and said here is your check . . . and he called the other employees over before he gave it to me . . . he handed me a check and congratulated me . . . . [The other employees also were] more or less surprised.

Other employees were to receive such a "bonus" and, in addition, he had "heard" that "there were numerous raises given to different employees." And, employee Loy Crayley credibly testified that he also received a $100 "bonus" shortly before the representation election even though he too "didn't expect it."

Company Manager David Bowman acknowledged that, for many months after this new "system" had been put in effect in 1993, "criteria" had "not been established to allow employees to advance either to individual team rates or certified team rates." As a consequence, management started receiving numerous employee "complaints." Nevertheless, it was not until "around March or early April" 1994 when management decided that "we should have one person in charge of establishing the criteria with the teams, putting the job profiles together and beginning to try to get people on the team rate." Management then picked a "trainer" from personnel named Mike Smeltz to do this job. Smeltz assertedly "completed the criteria" "in the late June–July time frame" and then management "began to try to get people to the rate they needed to be at." Team members "would demonstrate or verify that they could do the jobs established by the criteria," and the Employer first "began providing team rates in August 1994." However, in addition, "other employees [who were not on teams] advanced to individual team rates by a demonstration of proficiency." Bowman was asked "why did you change your plan . . . and do this for non-team members as well as team members at that particular time." He responded: "Because we were not able to implement teams as rapidly as we hoped to."

Bowman testified on cross-examination:

> Q. There is no document that says that an employee who is not on a team may progress to the individual rate by demonstrating proficiency?
>
> A. Not that I know of. . . .
>
> Q. The Employer never told any employees who were not team members that they could get a raise by demonstrating proficiency at any time before the Company started taking those non-team members through the check off procedure, correct?
>
> A. That's true . . . .

Michael Bobay, the Employer's "manager of production teams" at York, asserted that commencing in September 1993 "they had a handful of teams and the goal was to implement the remainder of the plant into teams" "as soon as we could get it done." This apparently has never occurred. Bobay noted that "a big part of the [newly adopted] pay system was the check off list for training rates and team rates"; however, "criteria" were not "in place in October 1993 when the new system was implemented" and "announced" to the employees and, further, Management wanted "uniformity" among the "teams," that is, it "didn't want one team to be real easy to get to a team rate or individual rate and another team being really difficult and very precise in how that was going to happen." Months later, on or about March 11, 1994, management announced that "trainer" Mike Smeltz should be given this "task," that is, "establishing the criteria." Bobay assertedly first received "a workable draft" of a "check list" system from Smeltz "in the end of July or early August 1994." Thereafter, some "team" employees began receiving "wage increases." In addition, management determined at the time to "apply the criteria to [some] non-team members" "because we knew they weren't going to be on a team" "for some time."

And, Myles or Mike Smeltz, a "training coordinator" for the Employer, acknowledged that on or about March 11, 1994, he was first assigned "the responsibility to develop the skills evaluation relative to the job skills and the job profiles" in conjunction with the Employer's new pay system which, as noted, had been instituted months earlier in October 1993; he was uncertain whether or not "Union activity was commencing in the facility" at that time; he had not previously been involved "in establishing team skills inventories"; he characterized this new assignment as "basically a lot of work" and "bogged down"; and he listed a number of additional "impediments" in this "project," including, inter alia, the fact that he "didn't even know how to turn the computer on much less operate one," he had never before "put together in a formal manner for computerized use all the elements of skills inventories for six separate teams," he had "no clerical assistance" in this undertaking and he "also had other job responsibilities."

Smeltz specifically recalled that there had been "concern" on the part of management "with regard to consistency and uniformity between one team and the other," and that he in fact had first "finished" his phase of this entire "project" "approximately October 1994." He acknowledged that he had "finished some of the skills inventories prior to that time," and, as noted,

pay raises were granted to various employees thus affected shortly before the union representation election. He did not "know" "at what point" "the skills inventories" were "ready" that "went into use in August 1994." He was asked, "with regard to consistency," if management had explained to him "why all the team skills inventories were not delayed for implementation until they were all completed," and he responded: "That was never related to me."

As stated, I find totally incredible on this record the attempts by Bowman, Bobay, Smeltz, and other Employer witnesses to demonstrate that the Employer's sudden granting of substantial pay raises and other benefits to both "team" and non-"team" employees shortly before the representation election was coincidental to and for legitimate business reasons totally unrelated to the Union's intense organizational effort then under way. Although management admittedly had wanted "uniformity" in implementing its "team" "criteria" and previously had not made any plans for including non-"team" personnel in this implementation, and although management had "dragged its feet" for many months in developing these "criteria," it suddenly partially implemented this program shortly before the representation election and included within the program non-"team" personnel. I find instead that management, in response to solicited employee complaints, was by this and related conduct promising and granting substantial benefits to its employees in an attempt to buy employee votes in the representation election.

In like vein, management, in response to solicited employee complaints during the Union's organizational campaign, returned employees to their straight 8-hour shifts with paid lunchbreaks and even permitted certain employees to further vary their shift hours, shortly prior to the representation election, in an attempt to buy their votes. Thus, as employee Troy Leader credibly testified, prior to January 1994 he, together with other employees, worked 8 a.m. to 4 p.m. on the first shift; the second shift worked 4 p.m. to midnight; and the third shift worked from midnight to 8 a.m. He, together with his coworkers, then had a "20 minute paid lunch." However, during late January 1994, the Employer "changed the hours" so that the first shift ran from 7 a.m. to 3:30 p.m.; the second shift ran from 3 to 11:30 p.m.; and the third shift ran from 11 p.m. to 7:30 a.m. In short, the employees, by virtue of this January 1994 change, now "started an hour earlier" and now "had to punch out for a half hour lunch." They were no longer paid for their lunch period. This change affected a substantial number of the unit employees, and the employees "didn't like it" and protested to Management.

However, it was not until August 1994, shortly before the representation election, when the Employer posted a "shift overlap" notice, apprising the employees, inter alia, that

> In an effort to reduce the amount of employees involved in a shift overlap, the Employee Task Team recommended that we return to the 20 minute paid lunch . . . .

A substantial number of unit employees were thus affected by this August 1994 change.

Leader explained that he had not been notified "about this change before [he] saw the [August] notice posted." Leader, because of a "baby-sitter" problem, then attempted to negotiate with Management a return to "7 to 3 instead of 8 to 4." He was initially told that if he "got everybody to agree on that they would allow it." Later, he and certain coworkers were permitted to work "7 to 3," "3 to 11," and "11 to 7." Leader, and his coworkers, however, "still had the [restored] paid lunch" as announced in August 1994.

Employee Philip Hoffman credibly testified that he had been instructed during July 1994 by his Supervisor Walt Green to go to and serve on the "Employee Task Team" which had been created to "correct the hours of the shop"; "they [Management had previously] changed our hours [to] . . . 7:00 to 3:30 with a half hour punch out and . . . there was a shift overlap . . . ." This "Task Team," which included selected rank-and-file workers and upper Management, met once a week "in the executive office." Management's representative "ran the meetings." Hoffman later observed the notice, quoted in part above, posted on the bulletin board; he had never seen this material before; these "documents" were not presented to the "Team." Further, he recalled that no similar "Task Force or Team" had ever been "created before" or "since" by management.

Hoffman explained on cross-examination that "most employees were unhappy about that change" instituted by management during January 1994; that the "meetings" of his "Task Team" occurred in July 1994; that hourly employees thereafter reported back to management and the "Task Team" about "what other employees thought about who should get the paid lunch"; that management "established [the] criteria based upon what . . . had [been] reported or suggested"; and that, subsequently, "the notice" changing employees' hours was "posted." The "meetings" attended by Hoffman occurred during July, before the filing of the representation petition. The subsequent "notice," however, was posted after the filing of the "petition." In addition, Hoffman explained that he had complained to management about the initial January 1994 change in hours of work "shortly after it was announced and implemented," and management's representatives then had responded: "Can't do anything about it."

Company Manager Bowman testified that prior to January 1994 "some employees had paid lunch and others did not." The "number of employees who received the 20-minute paid lunch expanded." Management determined in January 1994 that "everyone would punch out for lunch and we would have an eight and one half hour day" with "overlapping shifts." This "change" affected "all hourly employees." A number of employees became "upset" and there was "dissension." Nevertheless, management "remained committed" to this "change" because, as Bowman put it, "we thought it was in the best interest in the development of teams." However, during "late July or early August 1994," management created a "Task Force" including employees and management, to study this problem and make recommendations. Bowman explained: "they were charged with going back to their work areas and soliciting comments, information and suggestions from other employees in their areas." Bowman was asked, "why this change was made in August 1994," and he responded:

> we had made every effort possible to make the overlap work . . . the employees were still disgruntled . . . [and] we met with the employees who determined the criteria . . . .

Here, too, I find totally incredible on this record the attempts by management's witnesses to demonstrate that the Employer's sudden restoration of this benefit shortly before the representation election was coincidental to and for legitimate business reasons totally unrelated to the Union's intense organizational effort then under way. Indeed, employee Hoffman credibly explained that he had complained to management about the

initial January 1994 change in hours of work "shortly after it was announced and implemented," and management's representatives then had responded: "Can't do anything about it." However, shortly before the representation election, management suddenly took action. I find that management, in response to solicited employee complaints, was by this and related conduct again promising and granting benefits to its employees in an attempt to buy employee votes in the representation election.

In addition to the above conduct, on August 19, 1994, the Employer's then Director Fred Brindisi wrote the unit employees:

> The Union election will be held on September 16, 1994. Your vote will be an important decision that will not only affect your families' future but also the future of Campbell Chain and all Campbell employees . . . .
>
> It is important that we continue to make changes to improve our Company; however, I'll be the first to admit we must do a better job in how we design and implement any necessary changes. You have made it clear that the Company should get input and recommendations from employees before changes are made. I recognize that in our effort to remain the number one chain manufacturer and beat the competition we have made some mistakes. Management has been preaching teams and employee involvement but Management has not always been practicing these concepts. You have gotten my attention and *this will* change! . . . .

Later, on September 15, the day before the representation election, Manager Bowman, who had replaced Brindisi during the campaign, apprised the assembled unit employees:

> There is no question that we have gotten way off the track over the last few years . . . we must approach things differently . . . I cannot stand here and make you promises, but I can stand here and tell you that Management has got the message and is listening.
> . . . .
> The message is clear we have to address the pay inequities. . . The pay system that was implemented was supposed to apply to everyone. . . . The new pay system was established to enhance development of teams. Everyone was supposed to be entitled to the same opportunities. What went wrong is we don't have everyone on the team system. This is a situation that must and will be corrected. . . . All I am able to give you at this time is my personal commitment that Management will address this concern and in a reasonable time frame. . . .

Further, during this representation campaign, as employee Loy Crayley credibly testified, Company Official Charles McCloskey announced "that we were getting a pretty good package this year" and "there would be a big increase in October." Employee Linda Flaharty also credibly related statements made by one of a number of "visitors to the plant from other Cooper facilities" shortly before the representation election to the effect that "we'd be better without" the Union and the Employer "had a better package deal to give us this year." Employee Shane Mittel credibly recalled Supervisor Charles McMahon stating: "[W]e were going to be surprised if the Union did not get in . . . we'd be surprised with the package we were going to get in October . . . ." Employee Richard Keister credibly testified that Supervisor Gary White had the following conversation with him at work some weeks before the representation election:

> He [White] asked me [Keister] how things were going and . . . if there is anything he could do for me . . . . He said the Company was looking to give a good benefit package out in October but he wasn't sure what was going to happen to it if the Union got in . . . .

In addition, Employee Denise Caswell credibly testified that Supervisor Terry Wallace announced to her and her coworkers: "[O]ff the record . . . we would be getting a pay raise . . . they were going to drop . . . the red circle . . . and give us a three level pay system . . . ." Caswell explained that the "red circle" was the existing "cap" on her and her coworkers' "hourly wage scale." Employee Dorothy Goodling credibly testified that Supervisor Wallace had stated during late August or early September 1994: "we started talking about our red circle" or "top" of employee hourly wage grade scales; Goodling was then "at the top of [her] labor grade"; and Wallace said:

> Well, I [Wallace] could tell you now, that's going to be dropped.

Goodling noted that later, during October 1994, Management in fact "dropped the red circle" "cap."

The United States Supreme Court explained in *NLRB v. Exchange Parts Co*., supra at 409:

> The broad purpose of Section 8(a)(1) is to establish "the right of employees to organize for mutual aid without employer interference." *Republic Aviation Corp. v. NLRB*, 324 US 793, 798. We have no doubt that it prohibits not only intrusive threats and promises but also conduct immediately favorable to employees which is undertaken with the express purpose of impinging upon their freedom of choice for or against unionization and is reasonably calculated to have that effect. In *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 686, this Court said: "The action of employees with respect to the choice of their bargaining agents may be induced by favors bestowed by the employer as well as by his threats or domination." . . . The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

The United States court of appeals in *NLRB v. WKRG–TV*, supra at 1307 to 1308, explained:

> The most formidable violations in terms of undermining the union's organizational drive were the somewhat spontaneous grants of benefits by the company after the organizational drive began . . . and before the election was held. . . . We cannot ignore decisional acceleration in employee benefits preceded by months of lethargy. Lightning struck only after the union's rod was hoisted. In this case the wage readjustments, and other benefits, to say nothing of the initial announcement of these benefits, were clearly a counterweight to [the union's] organizational efforts. To permit a company to time its announcement and allocation of benefits in such a fashion would be a great disservice to the ideal of organizational freedom so deeply imbedded in the National Labor Relations Act.

And, the Board, in *Flexsteel Industries*, supra at 746, has "characterized" such violations, with court approval, "as hallmark violations," noting:

> wage increase violations during the course of an organizing campaign, such as the ones here, carry a special potential for long lasting impact because of their significance to employees and because the Board's usual remedies do not require the employer to withdraw the benefits from the employees . . . .

See also *Horizon Air Services*, supra at 243.

On the credible evidence of this record, I find and conclude that Respondent Employer, in resisting Charging Party Union's attempt to represent its employees, had interfered with, restrained and coerced its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the National Labor Relations Act, by soliciting employee grievances and complaints and promising employees a better benefit package in order to dissuade them from supporting the Union; by telling employees that "their red circle rates would be eliminated" in order to discourage their support of the Union; and by promising employees that they would receive benefits if they rejected Union representation, telling them that pay inequities would be corrected, everyone would be placed on a team system and these steps would be completed within a reasonable time. I also find and conclude that Respondent Employer had discriminated in regard to the hire or tenure or terms and conditions of employment of its employees in an attempt to discourage membership in the Union, in violation of Section 8(a)(1) and (3) of the Act, by granting substantial hourly wage increases to some 30 named employees; by granting $100 bonuses to some five named employees; and by returning employees to a straight 8-hour shift with a paid lunchbreak and permitting employees to change the hours their shift began.

Management, however, also made sure that its employees would not miss "the inference" or "the suggestion of a fist inside the velvet glove" and, accordingly, accompanied the above coercive and discriminatory misconduct with clear and unmistakable threats to relocate and close its York facility if the employees chose union representation. Thus, employee Randy Coy credibly recalled "facilitator" Deb Pelen's warning shortly before the representation election:

> [I]f you [Coy] don't think this plant will pick up and move if a Union comes in here . . . you got another thing coming . . . they could pick up and move to Mississippi anytime they want . . . .

Employee Troy Leader credibly recalled that Company Supervisor Austin Miller "told me that if a Union got in the Company would not be competitive and it would be forced to either be closed or move . . . ." Employee Philip Hoffman credibly testified that he overheard Supervisor Miller state: "If the Union got in the Company would probably close or move due to the competitive nature of the business." Employee Deborah Oberdorff credibly testified that Supervisor Gene Grim stated to her and her coworkers:

> [T]hey would close the doors and they would go down south . . . they were not going to settle for a Union . . . .

Oberdorff recalled that "facilitator" Deb Pelen later similarly stated at work that management "would close up the doors and move down south" "if the Union came in."

And, employee Lawrence McFatridge credibly testified that Supervisor Grim stated:

> I [Grim] am telling you, if this Union comes in . . . the Company is out of here . . . they will go south . . . .

Employee Brian Snyder credibly testified that "facilitator" or "supervisor" Ken Hanna stated to him at work during early September 1994, "if the Union gets in here they can move down south . . . ." Snyder also recalled:

> Gene Grim approached me [Snyder] . . . he asked my why I wanted a Union when the Company had done so much for me . . . why was I so upset with the Company that I feel I need a Union.

Snyder related his complaints to Grim, and Grim warned that "there was a company . . . that had a strike three years prior and . . . now they were closing . . . and that ought to tell me something . . . ." Employee George Lighty credibly recalled "facilitator" Pelen repeatedly stating at work "during the campaign" "that the Company would probably move south . . . they might possibly move to Mexico because they had a plant in Mexico," and Supervisor Gary White "also stated about the Company moving . . . the plant would move if the Union got in and they would not negotiate . . . ."

Further, employee Curvin Wolfgang credibly testified that on the day of the election he was summoned to the "office" by Supervisor James Diffendarfer and told:

> I [Wolfgang] was about to take a vote . . . I should be very serious about the vote . . . it was a very serious matter . . . the judgments I would make would have adverse effects on my future . . . if the Union were to come in here . . . . it would jeopardize the future of the chain works . . . Campbell Chain would no longer exist under the name of Campbell Chain but under some other name . . . .
>
> . . . .
>
> [T]he future of the Company would be jeopardized if the Union were to come in . . . .

In like vein, employee Shane Mittel credibly recalled Supervisor Charles McMahon stating:

> [I]f the Union did get in . . . the Company would be moving to Mississippi, they were building a warehouse there . . . he couldn't afford to lose his job and he didn't think none of us could afford to lose our jobs also . . . .

Mittel also overheard Supervisor Austin Miller similarly tell employees at the plant shortly before the representation election

> that he [Miller] couldn't afford to lose his job if the Union got in, the Company would close [its] doors and leave . . . they had made some mistakes . . . give the Company a chance . . . .

And, later, on the day of the election, Supervisor Diffendarfer summoned Mittel to "his office" and apprised the employee:

> He [Diffendarfer] couldn't afford to lose his job . . . he didn't think anybody else could afford to lose a job . . . the Company wouldn't tolerate having a Union come through the doors . . . . He showed me [Mittel] a ballot that I'd be voting with . . . [and] put a check [in the no box] . . . .

Further, employee Stanley Kinard credibly recalled "facilitator" or "supervisor" Ken Hanna stating to him at work during August 1994,

> if the Union would come in here . . . they could and would unbolt these machines from the floor so fast and move out of here it's not funny . . . .

Upper management was, concededly, well aware during the Union's organizational campaign that "there was a feeling among employees that Cooper might move the plant south." Nevertheless, as Company Official Koehne acknowledged, "nobody from Management ever told the employees flat out we have no intention of closing this plant" as part of its claimed effort to combat this existing "air of negativism."

I find and conclude that Respondent Employer, by the above and related conduct, further violated Section 8(a)(1) of the Act by coercively interrogating employees about their Union interests and threatening employees that it would close or relocate its facility if they selected the Union as their representative. For, as restated in *Overnight*, supra at 685 to 686,

> [An] employer is only free to tell [employees] "what he reasonably believes will be the likely consequences of unionization that are outside his control," and not [make] "threats of economic reprisal to be taken on his own volition. . . ."
>
> . . . .
>
> [An] employer . . . cannot be heard to complain that he is without an adequate guide for his behavior. He can easily make his views known without engaging in "brinkmanship" when it becomes all to easy to "overstep and tumble into the brink" . . . . At least he can avoid coercive speech simply by avoiding conscious overstatements [which] he has reason to believe will mislead his employees . . . .

And, as the Board noted in *Q-1 Motor Express*, supra at 268,

> We have emphasized, with Court approval, that threats of plant closure and discharge not only are "hallmark" violations [of the Act] but "are among the most flagrant of unfair labor practices . . . ."

Management, at the same time, also made clear to the employees that it would not negotiate or bargain in good faith with the Union if chosen as their collective-bargaining representative in a Board-conducted representation election, in further violation of the proscriptions of Section 8(a)(1) of the Act. Thus, employee Ray Wintermyer credibly testified that shortly prior to the representation election Supervisor Terry Wallace asked him at the plant "why we needed a Union." Wintermyer, as noted, responded: "Because we lost our retirement . . . . hospitalization . . . and profit sharing . . . ." Wallace admonished Wintermyer: "If I [Wintermyer] didn't like the retirement there I should go someplace else for a job." Wallace, in this same or another conversation, also apprised Wintermyer that "Cooper Tool was too big a Company to negotiate with the Steelworkers . . . they just wouldn't negotiate." In addition, Wintermyer recalled Company Official Bernard Koehne similarly apprising the assembled unit employees shortly prior to the representation election:

> He [Koehne] . . . was . . . a Company negotiator . . . [and] when they left [Company headquarters in] Houston with a package for Cooper Tool that's all there was . . . there was no other negotiations on their part . . . there was no better deal coming out of Houston but the deal that they had . . . they would not give one more inch . . . .

Employee Jeffrey Beam also credibly recalled that Company Representative Koehne told the assembled employees shortly before the representation election that "Texas makes up what every plant that Cooper owns gets and there is no bargaining on that whatsoever." Employee Lawrence McFatridge also credibly "understood" Company Representative Koehne to be telling the assembled employees shortly before the representation election that "we will not negotiate a contract"—"the Company would refuse to negotiate a contract." In addition, employee George Lighty credibly related how Company Representative Koehne apprised the assembled employees "during the period just before the election" that

> they [the Employer] would not negotiate with the Union . . . the Company only had so much to offer and they weren't negotiating with them . . . .
>
> . . . .
>
> the Company policy was not to negotiate with the Union . . . they only have so much to give no matter what . . . .

In addition, employee Stanley Kinard credibly recalled Company Official Koehne addressing the assembled unit employees shortly before the representation election:

> Mr. Koehne stated . . . when we come in to negotiate a contract . . . we give you the bottom line . . . you can take it or leave it . . . .

Kinard raised his hand and asked Koehne, "you mean you don't have to sit down and negotiate in good faith." Koehne responded: "we give you the bottom line and you either take it or you go on strike." Kinard again raised his hand and asked, "isn't there collective bargaining . . . while we work towards an agreement . . . beneficial for both sides . . . ." . Koehne responded: "that wouldn't serve any purpose . . . .you take the bottom line or you go on strike . . . ." And, as Manager Bowman had made clear to the assembled unit employees on the day before the representation election,

> As you know, all Union contracts are negotiated between Houston and the Union. Anyway you look at it, that leaves you and me out of the picture. . . . You and I have the most to lose and, in the end, will have the least to say.

Clearly, "the above statements unlawfully threatened that employees' efforts to organize would be an exercise in futility." Overnight, supra at 671. These coercive "statements" were made by high-ranking members of Management and, as noted, accompanied by coercive interrogation, threats, interference, and discrimination. Further, employee Arlie Nafziger, an open and active union supporter, credibly testified that shortly before the representation election "facilitator" Ken Grove approached him in the plant and stated: "what am I [Nafziger] going to do for a job if the [Union] doesn't get into the shop." Nafziger "walked away." "Facilitator" Grove also attended a union meeting, claiming that he "was just a regular worker" and "had no authority to really do anything." Shortly thereafter, as employee Denise Caswell credibly testified, Caswell and her coworkers attended a meeting at the plant. In the next room, "facilitators" Ken Grove and Deb Pelen, together with upper Management, were conducting a meeting. Caswell and her coworkers "could hear the whole meeting in the next room" "plain as day." Caswell testified:

> He [Grove] said that he was at a Union meeting, that the people were wondering what he was doing there . . . Deb [Pelen] . . . want[ed] to know the names of all the people that were there that talked bad about [her] because [she] was out to get them . . . .

Employee Dorothy Goodling, as she credibly testified, also overheard the above Grove-Pelen exchange in the next room—

"they were very loud." She recalled overhearing Grove explain that the March 7 union meeting "was a bitch session" and Pelen "wanted to know what people were at that meeting." Management's representatives, at the same time, were repeatedly admonishing employees that management "would see [the employees' Union] cards" and threatening them with plant relocation, plant closing, and related reprisals.

I find and conclude on this record that Respondent Employer, by the above conduct, also engaged in surveillance of or created the impression it was engaging in surveillance of employee protected concerted activities, and further interfered with, restrained, and coerced its employees, in violation of Section 8(a)(1) of the Act. Such conduct, assessed in context here, clearly tended to impinge upon employee Section 7 activities.[9]

The Board-conducted representation election was subsequently held as scheduled on September 16, 1994. Although, as noted supra, 224 of the 393 unit employees had signed or otherwise executed union authorization cards prior to the election, only 176 ballots were cast for the Union and 182 ballots were cast against the Union. The Employer thereafter apprised the unit employees that certain requested changes in its pay system will not occur "because of the filed Union charges" and, further, placed the onus for denying an employee performance raise on the Union by stating to the employee that the denial was "because of the Union business." Thus, as employee Dennis Leber credibly testified, the Employer conducted among the unit employees "a feedback meeting from an attitude survey" after the representation election and, there, "put . . . on a screen" the following notice (G.C. Exh. 9):

> Feedback Meetings
>
> Advice of our legal council [sic] is to not implement any pay system changes at this time because of the filed Union charges.

In addition, employee John Switzer credibly testified that during May 1995 Supervisor Jim Diffendarfer informed him of his "appraisal" or "review" and stated that he, Diffendarfer, "would check . . . to see about a raise." Switzer, under the existing wage system for maintenance employees, was apparently not entitled to such a raise. Later, Diffendarfer apprised the employee:

> He [Diffendarfer] said that as far as a raise goes, it was approved down through Houston and Raleigh, but the attorney said no because of the Union business.

See also the credible testimony of employee Kinard, discussed above, where Kinard was told in connection with the Employer's October 1994 wage increase package:

> [T]he Company would have given you a lot more had it not been for all the charges pending against it with this Union drive and everything going on with the court hearing and stuff . . . .

Company Director Roger Dick acknowledged that on or about January 1995 the Employer conducted "opinion surveys" among its employees "to bring issues forth from employees," and "feedback meetings" were later held with the employees "once the surveys [came] back." At these "feedback meetings" there were "issues . . . related to [employee] wages" and "the wage system" with "a number of perceived inequities"; and Dick "wanted to have input from the folks on that." Dick, however, assertedly apprised the assembled employees at the "feedback meetings" that "we may not be able to deal with it right now" because of the pending representation proceeding; and employees were notified, as depicted on General Counsel Exhibit 9, "Advice of our legal council [sic] is to not implement any pay system changes at this time because of the filed Union charges." Dick was asked how did he "reconcile" the Employer's position on "pay system" changes with the Employer's position on pay raises previously granted to "team" and non-"team" employees "under or in conjunction with team systems" during the pending representation proceeding. He generally claimed: "I view them as different." On cross-examination Dick testified:

> Q. Did you give any further explanation [to the assembled employees] other than to just read this [G.C. Exh. 9] to the employees?
>
> A. Simply saying what I already stated that we wanted to get their feedback so that at some future time we wanted to be able to address these concerns.
>
> Q. But did you give them any further explanation as to the reason that you were not doing any implementation at the time other than what you read to them on this overhead?
>
> A. No.

As restated in *Parma Industries*, supra at 91,

> The good faith postponement of benefit increases otherwise due is lawful when the employer is careful to explain that its purpose is to avoid the appearance of interference with employees' organizational efforts. . . . The employer, however, may not seek to shift to the union the onus for the postponement of such increases. . . . [T]he withholding of the established pay raise because of the union violated Section 8(a)(3) and (1), and the supervisors' announcement of that decision to the employees interfered with employees' Section 7 rights and constituted violations of Section 8(a)((1) . . . .

For, as explained in *Hovey Electric*, supra at 482,

> The Board will find that an employer violates Section 8(a)(1) of the Act if the employer attributes to the union its failure to grant a benefit . . . .

The credible evidence of record, as recited above, amply demonstrates that management was "not careful" here to explain to its employees that the "postponement of . . . increases" was "to avoid the appearance of interference with employees' organizational efforts." On the contrary, management repeatedly "attribute[d] to the Union its failure to grant . . . benefit[s]" and thus "shift[ed] to the Union the onus for the postponement of such increases," in plain violation of Section 8(a)(1) of the Act, as alleged. In addition, the credible evidence of record also establishes that management discriminatorily denied a performance wage increase to employee Switzer "placing the onus for that decision" on the Union, in violation of Section

[9] Counsel for Respondent argues at p. 100 in his posthearing brief that Grove's "attendance at the Union meeting alone does not per se establish unlawful surveillance." However, as stated, I find Grove's total conduct, assessed in context, tended to impinge on employee Sec. 7 rights. Cf. *NLRB v. Computed Time Corp*., 587 F.2d 790, 794–795 (5th Cir. 1979).

8(a)(1) and (3) of the Act. Switzer was told that his raise was denied "because of the Union business."[10]

Management, also during this postelection period, discriminatorily suspended for 30 days prounion protagonist employee Stanley Kinard. See section G, supra. Thus, employee Stanley Kinard credibly testified that he was hired by the Employer in 1973 and currently works as a machinist in the maintenance department. He became active in the Union's organizational campaign starting about early April 1994. He served on the Union's organizing committee, attended union meetings, prominently displayed union buttons and solicited the union memberships of his coworkers. He recalled, as noted above, "facilitator" or "supervisor" Ken Hanna stating to him at work during August 1994,

> if the Union would come in here . . . they could and would unbolt these machines from the floor so fast and move out of here it's not funny . . . .

He responded stating that "if this Company could make money some place else they'd be out of here today anyway."

Kinard also recalled, as noted above, Company Official Koehne addressing assembled employees shortly before the representation election. He testified:

> Mr. Koehne stated . . . when we come in to negotiate a contract . . . we give you the bottom line . . . you can take it or leave it . . . .

He raised his hand and asked Koehne, "you mean you don't have to sit down and negotiate in good faith." Koehne responded: "we give you the bottom line and you either take it or you go on strike." He again raised his hand and asked, "isn't there collective bargaining . . . while we work towards an agreement . . . beneficial for both sides . . . ." Koehne responded: "that wouldn't serve any purpose . . . you take the bottom line or you go on strike . . . ."

Kinard also recalled Supervisor Don Danley questioning him about wearing "so many [Union] buttons." Danley asked "why do you want a Union in here . . . ." He responded that he wanted some uniform "policy." Danley replied: "you ought to just hold off . . . wait until you see the October package . . . ." Later, after management gave the employees its "October package," Kinard said to Danley, "what did you think of the October package," and Danley responded:

> [T]he Company would have given you a lot more had it not been for all the charges pending against it with this Union drive and everything going on with the court hearing and stuff . . . .

Kinard next addressed the sequence of events culminating in his suspension. He and Michael Livelsberger, a leadman at the plant, had been "friends for 30 years," they "grew up in the same town," "ran around together," "dated some of the same girls," and would "meet . . . on social occasions." On May 23, 1995, Livelsberger "was filling in for a supervisor" at the plant. Livelsberger "asked" Kinard "to fix a shaft so they could keep [a machine] running." Kinard did the job in about a half an hour. Kinard later received the "work order" for this job which indicated that he only had "polish[ed] the shaft." Kinard explained that "to polish the shaft would have taken two minutes . . . ." Kinard went back to Livelsberger and said:

> Mike . . . the work order has polish on it . . . I [Kinard] actually had to set this shaft up, indicate it and recut it . . . you want me to change this from polish to recut . . . . He [Livelsberger] sort of laughed a little bit and said no . . . it's the same thing . . . . I said, but you'd know the difference between polish and cutting if I was to cut your tires . . . . I said, but since we're friends I would use a valve stem puller and pull your valve stems out because I wouldn't want to ruin your tires . . . . they cost a lot of money . . . . [Livelsberger] maybe chuckled a little bit [and] that was about it . . . .

Kinard, within an hour, was summoned to Manager Bowman's "office." Also present was Management Representative Jessie Eyre. Bowman said that "we are here to discuss the charges that you threatened to cut Mike Livelsberger's tires." Kinard said that "this is a joke"; "there was nothing serious about this at all"; "we've carried on many times in the past about different things"; "anybody knows that Livelsberger was just a clown all the time"; "they're overlooked because they're just a joke." Bowman, however, said "no" "this is a serious matter." Kinard said:

> I did say those words . . . if you are looking for something to hammer me on . . . you have it . . . but I didn't threaten Mike . . . I think [this is] about my Union buttons [which he then wore on his hat] . . . .

Later that same day, Kinard was apprised by management that he was temporarily suspended and "escorted out of the plant."

Thereafter, on June 5, 1995, Kinard was notified in writing and in person by Management that he was being given a 30-day suspension for the above incident. Management stated:

> Our investigation determined that on May 23, 1995, you threatened to slash the tires of a maintenance leadperson who had made a work assignment to you which you apparently took exception to . . . . In reaching our decision we have considered the fact that you had received a prior warning dated December 14, 1989 for a similar incident for directing abusive language against another employee and threatening him. Moreover, in the course of our investigation, it was determined that other threats have been made by you during your course of employment with the Company . . . .

Kinard could not "remember getting a warning" for the cited 1989 incident. He knew of no one else who has been suspended by the Employer without pay for 30 days "for any incident," and he has had no other "disciplinary action taken against" him. See G.C. Exh. 90, the Employer's "Work Rules and Regulations," and G.C. Exhs. 89(a) to (v) consisting of various employee writeups and disciplinary actions issued by the Employer to other employees, including, inter alia, a "warning" for "abusive language toward" a coworker and telling a "facilitator to mind [his or her] own business"; a "reprimand in lieu of suspension" for "harassment of a fellow employee"; a "reprimand" for having "on several occasions threatened to use bodily harm toward a fellow employee"; and a 3-day "suspension" for "refusal to obey orders" and "leaving work without permission." See also Tr. 1871 to 1872.

On cross-examination Kinard testified:

[10] Further, the credible evidence of record does not sufficiently establish here that Switzer's raise would have been denied at the time for lawful nondiscriminatory reasons.

> Q. And didn't Bowman also tell you that you were being accused of throwing steel at [employee] Chris [Brock] . . . back in 1989 . . . .?
>
> A. I did not throw steel at Chris Brock.
>
> Q. Did Bowman tell you that was the reason that you were being given a reprimand?
>
> A. He asked me if I had thrown steel at Chris Brock. . . . . I said no I didn't. I took the steel which he threw in my box and I threw it back against the wall where it belonged on the rack . . . .

Kinard also testified:

> Q. . . . . Had you threatened to burn down or blow up a doll house that [employee] Gary Hirsch had been building for his child?
>
> A. Not in a serious manner.
>
> Q. That was another one of your jokes?
>
> A. We joke constantly.

Kinard denied "threatening" other coworkers, and explained that the above exchange with coworker Hirsch, a friend for some 12 years, occurred over 5 years ago.

Manager Bowman testified that Personnel Manager Harold Anstine had informed him about the Kinard-Livelsberger incident, and he was directed to investigate the matter. Bowman, together with another management representative, Jessie Eyre, questioned Kinard in his office. There, Kinard admitted stating what Livelsberger "had said." Kinard explained that he was "joking." According to Bowman, Kinard did not then make any reference to "his Union activities." Bowman then indicated to Kinard that "we would report the facts to Harold Anstine." Later that day, Anstine informed Kinard that "he was suspended indefinitely pending further investigation." The Employer subsequently determined to suspend Kinard for 30 days. Bowman claimed that this "decision" was "based upon the investigation findings that there had been other threats . . . ." "Termination" was "considered," however, it was finally decided only to suspend Kinard for 30 days because "he was a long-term employee."

Bowman explained on cross-examination that Anstine had apprised him that Kinard would be suspended "indefinitely pending investigation." Anstine apparently had "communicated" with corporate headquarters. Bowman had never previously been "involved in disciplinary actions" "in all 18 years" of service. He also had never known Kinard "to cut anybody's tires" or "to hit anybody." Anstine later proceeded with an "investigation" as to "whether there were any other instances with regard to Stan." Bowman admittedly did not make the "30-day suspension determination."

Harold Anstine, employee labor relations manager for the Employer, was personnel manager during the union campaign. Anstine recalled that Livelsberger had informed him during May 1995 that he, Livelsberger, "thought he was threatened" by employee Kinard. Anstine conferred with Bowman and Eyer, and "asked them to talk with Kinard about the incident." Anstine later got their "statement" and discussed the matter with Director Roger Dick. Management determined "to place [Kinard] on suspension pending further investigation." Anstine so notified Kinard. Anstine next testified:

> The next morning I was told that there were two or three other people in the machine shop area that had similar types of run ins with Kinard.

According to Anstine, Kinard's personnel file showed that "back in 1989 he had a reprimand where he had threatened another employee." In addition,

> Livelsberger told me there were several people in the machine shop that wanted to talk to me . . . they had similar run ins. . . . In total I talked to them plus a half dozen extra . . . altogether maybe nine or ten people . . . .

Anstine asserted that "this bullying and threatening that was done by Kinard was serious enough that he should be terminated." However, a "decision" was made by "division" or "headquarters" that Kinard would only get a 30-day suspension "due to the length of his service." Anstine nevertheless acknowledged that "that's a long suspension by Campbell Chain's standards." Management, assertedly, "wanted to make certain that there was no misunderstanding on anybody's part that that sort of action would not be tolerated." When asked if Management "could have made that same understanding with a shorter suspension," Anstine responded: "That's possible . . . I don't know." Anstine admittedly "knew" that Kinard was "a Union supporter," however, assertedly, Kinard's union activity was not "a factor in the decision."

Anstine, on cross-examination, acknowledged that he did not "meet with Kinard"; he assertedly spoke with employees Robert Herman and Fay Beaverson about "run ins with Kinard" and thereafter never asked Kinard about these employee "complaints" and, in short, "took their word for it"; and "nobody has ever been suspended for such a long period of time . . . ." Anstine was then questioned about disciplinary actions taken against other employees. Thus, for example, "Hohenadel accused Meyers of threatening to punch him with a screwdriver and throw him in the . . . .waste treatment thing"; Meyers "was suspended for a day" and Hohenadel was given a "reprimand" for "calling Meyers an idiot." Gary Wilders "threatened to hit a supervisor" and was "given an in house suspension." Anstine acknowledged that "I don't know what an in house suspension is." Michael Shoff "received a reprimand" after having "on several occasions threatened to use bodily harm toward a fellow employee." In that case, Anstine assertedly "got the two guys together," Shoff "apologized" and "we issued a reprimand." No effort was made to "bring Livelsberger and Kinard together in a similar situation."

On the credible evidence of record here, I find and conclude that Respondent Employer discriminatorily suspended employee Kinard for 30 days, while this proceeding was pending, because of his Union and related protected concerted activities. I do not credit and reject as pretextual management's shifting and largely unsubstantiated asserted nondiscriminatory reasons for this unusual and unprecedented treatment of this employee for over 20 years. Management, apparently, wanted to even go further, also unusual and unprecedented, and terminate the employee, but was advised to relent from this extreme response. In short, I am persuaded here that management discriminatorily disciplined employee Kinard, in violation of Section 8(a)(1) and (3) of the Act, and such disciplinary action, on this record, would not have occurred for lawful nondiscriminatory reasons.

Counsel for Respondent Employer argues that the Employer is not responsible for the above unlawful statements and conduct attributed to "facilitators" Pelen, Grove, and Hanna because they, as hourly paid "facilitators," were not "agents" or

"supervisors" under the Act during the pertinent time periods. Section 2(11) of the Act defines a "supervisor" as

> [A]ny individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

And, Section 2(13) of the Act provides:

> In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

As restated in *Amperage Electric*, 301 NLRB 5, 13 (1991),

> Actual existence of true supervisory power is to be distinguished from abstract, theoretical or rule book authority. . . . What is relevant is the actual authority possessed and not the conclusory assertions of witnesses. . . . [T]he enumerated powers listed in Section 2(11) of the Act are to be read in the disjunctive . . . [and] Section 2(11) also states the requirement of independence of judgment in conjunctive with what goes before . . . . The performance of some supervisory tasks in a merely routine, clerical, perfunctory or sporadic manner does not elevate a rank and file employee into the supervisory ranks. . . . [T]he decisive question is whether [the individual involved] has been found to possess authority to use [his or her] independent judgment with respect to the exercise by [him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act . . . . In short, some kinship to management, some empathetic relationship between employer and employee, must exist before the latter becomes a supervisor of the former . . . . [Citations omitted.]

And, as noted in *Propellex Corp*., 254 NLRB 839, 843 (1981),

> [D]uring the election campaign, as before, the leadladies, by virtue of their historic role as a conduit for [the employer's] information and orders, were clothed by [the employer] with the apparent authority of its agents; were put in a position by [the employer] to be understood by employees to be agents of [the employer]; and therefore their actions should be imputed to [to the employer] . . . . [Citations omitted.]

The credible evidence of record makes it clear that the above "facilitators" were "supervisors" and/or "agents" under the Act as alleged. The "facilitators" worked varying hours in several departments and were thus not confined to one specific shift because of their broad responsibilities for the Employer in connection with their "team" duties (see G.C. Exhs. 14 and 15); received for the most part substantial pay raises at the time of their appointments to this position; served as spokespersons for Management telling "team" members in effect "what is going on in the Company"; were "empowered to enact" and thus had "the authority to make decisions"; showed employees how to get their jobs done; performed essentially the same duties as salaried "facilitators" who were admittedly "supervisors" under the Act; were regarded by the Employer more like "shift coordinators" who were admittedly "supervisors" under the Act; assigned duties and lunchtimes to rank-and-file workers; approved employee vacation and sick leave requests; signed employee time cards; maintained employee attendance cards; issued verbal warnings to rank-and-file workers; worked out of offices; participated in planning overtime scheduling; did not "punch in" like production and maintenance workers and wrote up their own hours of work for a period of time; prepared work schedules; conducted and/or participated in employee performance evaluations; and scheduled "team" meetings and shut down production machines during those meetings. Illustrative of the power thus granted to these "facilitators" is the following credible testimony of employee Randy Coy:

> Q. How long was Ms. Pelen your facilitator?
>
> A. . . . .A few months, I am not exactly sure.
>
> Q. Did she ever say anything to you that suggested that she was in charge?
>
> A. Yes. . . . She [said do it] my way or [it's] the highway.

As noted above, during August 1994, Company "facilitator" Deb Pelen

> came to me [Coy] and asked me to get everybody on our team checked off as soon as possible . . . they want them checked off and to team rate as soon as possible . . . get everybody together and have them checked off as soon as possible . . . .

Coy "did exactly what she [Pelen] told me." And, "as a result of this check off procedure" some six to eight employees on his "team" were given "raises" shortly prior to the representation election.[11] I do not credit the assertions of the various Management witnesses, including its "facilitators," to the effect that they were really "coaches" or "leadmen" without "supervisory" authorities.

I find and conclude that hourly paid "facilitators" Pelen, Grove and Hanna—like the salaried "facilitators"—responsibly and effectively directed the employees in the performance of their work, having the authority to and exercising one or more of the indicia listed in Section 2(11) of the Act, and that the exercise of such authority was not of a "merely routine" or "clerical nature" but required the exercise by them of "independent judgment." Moreover, I find and conclude that the Employer led its employees to reasonably believe that Pelen, Grove, and Hanna, as well as the other admitted supervisors named in this proceeding, had the authority to speak on behalf of the Employer, and therefore their coercive and related statements and conduct cited herein should be imputed to the Employer.[12]

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[11] Further, with respect to "facilitator" Hanna, he acknowledged that on September 1, 1994, some weeks before the representation election, he was changed "from facilitator to supervisor" because "they wanted two supervisors on each shift."

[12] Counsel for Respondent Employer, although having previously repeatedly admitted and acknowledged the "agency/supervisory" status of Charles McMahon (see Tr. 1008), later, after counsel for the General Counsel had rested their case during the third week of hearings, moved to withdraw this admission. This request was denied as untimely (see Tr. 1907 to 1911). On reconsideration, I adhere to that ruling. In any event, I would find, on this record, the Employer responsible for McMahon's statements and conduct during the pertinent time period as its "supervisor" and/or "agent" (see Tr. 2390 to 2410). I have, as noted, discredited McMahon's testimony pertaining to his unlawful conduct during the pertinent time period. In addition, McMahon, admittedly a "supervisor" for some 22 years, acknowledged that he had been in-

CONCLUSIONS OF LAW

1. Respondent Employer is engaged in commerce as alleged.

2. The Charging Party Union is a labor organization as alleged.

3. Respondent Employer has violated Section 8(a)(1) of the Act by coercively interrogating employees about their union activities; by soliciting grievances from employees in order to dissuade them from engaging in union activities; by promising employees a better wage and benefit package in order to dissuade them from supporting the Union; by promising employees that they would receive benefits if they rejected union representation, telling them that pay inequities would be corrected, everyone would be placed on a team system and these steps would be completed within a reasonable time; by telling employees shortly prior to the representation election that their "red circle rates" will be eliminated; by engaging in surveillance of or creating the impression of engaging in surveillance of employee union activities; by threatening employees with discharge, plant relocation, plant closure, or other reprisals for engaging in union activities; by telling employees that the Employer would see their signed union authorization cards; by telling employees that collective bargaining would be futile, because the Employer would not negotiate in good faith with the Union if selected by them; by telling employees after the representation election that the Employer would have given them a greater wage and benefit package if the Union had not filed charges against it with the Board; and by placing the onus for the Employer's lack of pay system changes on the Union for having filed charges with the Board.

4. Respondent Employer has violated Section 8(a)(1) and (3) of the Act by granting hourly wage increases and bonuses to its employees shortly prior to the representation election in an attempt to discourage membership in the Union; by similarly permitting employees to return to a straight 8-hour shift with a paid lunchbreak and permitting employees to change the hours their shift began and ended shortly prior to the representation election; by discriminatorily denying a performance wage increase to employee John Switzer placing the onus for that decision on the Union; and by discriminatorily disciplining employee Stanley Kinard.

5. As discussed below in the remedy section, infra, a majority of Respondent Employer's employees in an appropriate unit had designated and selected the Union as their representative for the purposes of collective bargaining; Respondent Employer's unfair labor practices are so serious and substantial in nature that the possibility of erasing their effects and conducting a fair and free representation election or rerun representation election by use of traditional remedies is slight; and, consequently, the employees' sentiments regarding representation having been expressed through union authorization cards would on balance be protected better by issuance of a bargaining order than by traditional remedies.

6. The unfair labor practices found above affect commerce as alleged.[13]

REMEDY

To remedy the 8(a)(1) and (3) violations found above, Respondent Employer will be directed to cease and desist from engaging in the conduct found unlawful and like or related conduct and to post the attached notice. Respondent Employer will also be directed to make whole employee Stanley Kinard for any loss of earnings and other benefits suffered as a result of his discriminatory suspension, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent Employer will also be directed to make whole employee John Switzer for any loss of earnings and other benefits suffered as a result of his discriminatory denial of a performance wage increase, with interest, as provided above. Respondent Employer will also be directed to preserve and make available to the Board or its agents on request all payroll records and reports and all other records necessary to determine backpay and compliance under the terms of this Decision and Order. And, Respondent Employer will also be directed to expunge from its files any references to the above discriminatory suspension of employee Kinard and notify him in writing that this has been done and that evidence of this discriminatory action will not be used as a basis for future personnel action against him, in accordance with *Sterling Sugars*, 261 NLRB 472 (1982).

A. The Propriety of a Bargaining Order

The General Counsel, as noted, also seeks a bargaining order here. The General Counsel alleges that a majority of Respondent Employer's employees in an appropriate unit had designated and selected the Union as their representative for the purposes of collective bargaining; that Respondent Employer's unfair labor practices, as found, are so serious and substantial in nature that the possibility of erasing their effects and conducting a fair and free representation election or rerun representation election by use of traditional remedies is slight; and that, consequently, the employees' sentiments regarding representation having been expressed through union authorization cards would on balance be protected better by issuance of a bargaining order than by the above traditional remedies. For the reasons stated below, I agree.

Thus, the Union initiated its campaign to represent the Employer's some 393 production and maintenance employees at its York facility during March 1994. Thereafter, by July 25, 1994, 224 of the 393 unit employees had signed or otherwise executed cards which clearly and unambiguously designated the Union as their collective-bargaining representative.[14] The Union requested recognition from the Employer as the duly

structed by Management, like other "supervisors," as to what he could or could not say to employees during the Union's campaign. He also acknowledged that on "the Monday after the Union election" an employee "came to" him "because [the employee] had heard [that another employee] got a raise and he wanted to know how come he didn't get a raise too." When asked "what is your relationship with [that employee] that would cause him to come to you," McMahon responded: "I was his supervisor." In my view, McMahon's "supervisory" and/or "agency" status has been sufficiently shown here.

[13] Counsel for the General Counsel, in fns. 86 and 115 of their 167-page posthearing brief, move to amend their previously amended consolidated complaints to allege additional 8(a)(1) conduct. The General Counsel's motion is denied as untimely and, in any event, the cited additional violations are at best cumulative and would not in any material way affect the above conclusions or the remedy in this proceeding.

[14] See Appendix A annexed hereto, containing a list of the 224 unit employees who had signed or otherwise executed union authorization cards on the dates indicated or by July 25, 1994, with pertinent exhibit and transcript references.

designated collective-bargaining representative of the unit employees on July 21, 1994, and the Employer refused. The Union filed a representation petition with the Board on July 25, 1994, and a Board-conducted representation election was scheduled for September 16, 1994.

The Employer, in resisting this organizational effort, as found above, interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act by, inter alia, soliciting employee grievances and promising them a better benefit package in order to dissuade them from supporting the Union; by telling employees that "their red circle rates would be eliminated" in order to discourage their support of the Union; and by promising employees that they would receive better benefits if they rejected union representation, telling them that pay inequities would be corrected, everyone would be placed on a "team" system and these steps would be completed within a reasonable time. The Employer also discriminated in regard to the hire or tenure or terms and conditions of employment of its employees in an attempt to discourage membership in the Union, in violation of Section 8(a)(1) and (3) of the Act, by granting substantial hourly wage increases and bonuses to unit employees and by returning employees to a straight 8-hour shift with a paid lunchbreak and, further, by even permitting employees to change the hours their shift began.

Upper management, on the day before the scheduled representation election, made clear to all the unit employees:

> Management has got the message and is listening. . . . The message is clear we have to address the pay inequities. . . . The pay system that was implemented was supposed to apply to everyone. . . . The new pay system was established to enhance development of teams. Everyone was supposed to be entitled to the same opportunities. What went wrong is we don't have everyone on the team system. This is a situation that must and will be corrected. . . . . All I am able to give you at this time is my personal commitment that Management will address this concern and in a reasonable time frame.

As discussed above,

> The danger inherent in [such] well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.
>
> . . . .
>
> The most formidable violations in terms of undermining the union's organizational drive were the somewhat spontaneous grants of benefits by the company after the organizational drive began . . . and before the election was held. . . . We cannot ignore decisional acceleration in employee benefits preceded by months of lethargy. Lightning struck only after the union's rod was hoisted. In this case the wage readjustments, and other benefits, to say nothing of the initial announcement of these benefits, were clearly a counterweight to [the union's] organizational efforts. To permit a company to time its announcement and allocation of benefits in such a fashion would be a great disservice to the ideal of organizational freedom so deeply imbedded in the National Labor Relations Act.
>
> . . . .
>
> wage increase violations during the course of an organizing campaign, such as the ones here, carry a special potential for long lasting impact because of their significance to employees and because the Board's usual remedies do not require the employer to withdraw the benefits from the employees . . . .

Management, however, also made sure that its employees would not miss "the inference" or "the suggestion of a fist inside the velvet glove" and, accordingly, accompanied the above coercive and discriminatory misconduct with clear and unmistakable threats to relocate and close its York facility if the employees chose union representation. Indeed, upper management was, concededly, well aware during the Union's organizational campaign that "there was a feeling among employees that Cooper might move the plant south." Nevertheless, as Company Official Koehne acknowledged, "nobody from Management ever told the employees flat out we have no intention of closing this plant" as part of its claimed effort to combat this existing "air of negativism." Upper management thus condoned these repeated threats, thoroughly documented supra, made by its front line representatives. And, of course, as stated above,

> threats of plant closure and discharge not only are "hallmark" violations [of the Act] but "are among the most flagrant of unfair labor practices" . . . .

Upper management, at the same time, also made clear to the employees that it would not negotiate or bargain in good faith with the Union if chosen as their collective-bargaining representative in a Board-conducted representation election, in further violation of the proscriptions of Section 8(a)(1) of the Act. Thus, employee Ray Wintermyer credibly recalled Company Representative Bernard Koehne apprising the assembled unit employees shortly prior to the representation election:

> He [Koehne] . . . was . . . a Company negotiator . . . [and] when they left [Company headquarters in] Houston with a package for Cooper Tool that's all there was . . . there was no other negotiations on their part . . . there was no better deal coming out of Houston but the deal that they had . . . they would not give one more inch . . . .

Employee Jeffrey Beam also credibly recalled Koehne telling the assembled employees shortly before the representation election that "Texas makes up what every plant that Cooper owns gets and there is no bargaining on that whatsoever." Employee Lawrence McFatridge also credibly "understood" Koehne to be telling the assembled employees shortly before the representation election that "we will not negotiate a contract"—"the Company would refuse to negotiate a contract." Employee George Lighty credibly related how Koehne apprised the assembled employees "during the period just before the election" that

> they [the Employer] would not negotiate with the Union . . . the Company only had so much to offer and they weren't negotiating with them . . . .
>
> . . . .
>
> the Company policy was not to negotiate with the Union . . . they only have so much to give no matter what . . . .

Employee Stanley Kinard credibly recalled Koehne addressing the assembled unit employees shortly before the representation election:

> Mr. Koehne stated . . . when we come in to negotiate a contract . . . we give you the bottom line . . . you can take it or leave it . . . .

Kinard raised his hand and asked Koehne, "you mean you don't have to sit down and negotiate in good faith." Koehne responded: "we give you the bottom line and you either take it or you go on strike." Kinard again raised his hand and asked, "isn't there collective bargaining . . . while we work towards an agreement . . . beneficial for both sides . . ." Koehne responded: "that wouldn't serve any purpose . . . you take the bottom line or you go on strike . . . ." And, as Manager Bowman also had made clear to the assembled unit employees on the day before the representation election,

> As you know, all Union contracts are negotiated between Houston and the Union. Anyway you look at it, that leaves you and me out of the picture. . . . You and I have the most to lose and, in the end, will have the least to say. . . .

As discussed supra, "the above statements unlawfully threatened that employees' efforts to organize would be an exercise in futility." These coercive "statements" were made by high-ranking members of management and, as noted, were accompanied by coercive interrogation, threats, interference, and discrimination. Further, upper management was also well aware of "facilitator" Grove's surveillance of a union meeting, later discussed in the plant in such a manner so that rank-and-file workers could overhear the coercive and chilling comments of management's representatives, in plain violation of Section 8(a)(1) of the Act. Employees were at the same time being coercively admonished that the Employer would get to see their Union authorization cards. And, in addition, upper management later made clear to the employees, after the representation election, that the Employer would have given them a greater wage and benefit package if the Union had not filed charges against it with the Board, and placed the onus for the Employer's lack of pay system changes on the Union for having filed charges with the Board, in further violation of Section 8(a)(1) of the Act. Upper management discriminatorily denied a performance wage increase to employee Switzer "placing the onus for that decision" on the Union, in violation of Section 8(a)(1) and (3) of the Act. Switzer was told that his raise was denied "because of the Union business." Finally, shortly before these hearings convened, upper management discriminatorily disciplined employee Kinard, an open and active union supporter, in an unprecedented and unusual manner, in violation of Section 8(a)(1) and (3) of he Act.

In sum, such massive and flagrant unfair labor practices, involving numerous "hallmark" violations of the Act, participated in and condoned by upper management, have prevented the holding of a fair and free representation election and require the remedial direction of a bargaining order. The lingering effects of such misconduct cannot be erased by traditional cease-and-desist provisions contained in an order and posted notice.

B. The Contentions of Counsel with Respect to the Union Cards

Counsel for Respondent Employer argues that a majority of Respondent Employer's employees in the appropriate bargaining unit had not voluntarily or sufficiently designated the Union as their collective-bargaining representative by July 25, 1994. However, as noted, by July 25, 1994, 224 of the "maximum" of 393 employees (fn. 7, supra) in the stipulated production and maintenance unit[15] had signed or otherwise executed cards which clearly and unambiguously designated the Union as their collective-bargaining representative. See Appendix A. Counsel for Respondent Employer contends in his 93-page appendix to his 157-page brief that "none of the authorization cards admitted may be counted in determining whether the Union represented a majority of employees due to the explanation of the purpose of the cards given by Union Representative Joe Pozza"; "the authorization cards of employees whose testimony differed from their [prehearing] questionnaire answers must not be counted"; "three unsigned authorization cards must not be counted"; "the authorization cards solicited on grounds they would be used to get a vote or election must not be counted"; "Robert Hake's authorization card must not be counted due to supervisory interference in its procurement"; "three authorization cards of employees who were told to sign to get more information must not be counted"; "the authorization card of an employee who was told to sign to verify meeting attendance must not be counted"; and "six authorization cards signed by employees who did not read them must not be counted."

The controlling legal principles in determining the validity of such cards were restated and applied in *Advanced Mining Group*, 260 NLRB 486, 508 (1982), enfd. 701 F.2d 221 (D.C. Cir. 1983), in part as follows:

> [E]mployees as a rule are not too unsophisticated to be bound, and should be bound, by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . . [T]here is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and telling him that the card will probably be used first to get an election. . . . Absent some other disability, the use or proposed use of the cards to secure an election does not alter their essential character as union designations.
>
> Second, an employee's thoughts or afterthoughts as to why he signed a union card and what he thought that card meant cannot negative the overt action of having signed the card . . .
>
> Third, where employees testify under the eye of company officials about card signing events which occurred much earlier and prior to company activities that constituted unfair labor practices, there is wisdom in requiring fairly strong evidence of misrepresentation before adjudging the signed cards invalid . . . . For, it is certainly conceivable that the same threats and benefits which shook an employee's original support of the union also altered the employee's memory of the events that occurred before the presentation of such threats and benefits . . . [T]he crucial question . . . is whether the union had the support of a majority of the employees in an appropriate unit at the time the request to bargain was made . . . . [See cases cited.]

As counsel for the General Counsel note in pages 123 to 167 of their brief, and as is shown in Appendix A of this decision, 181 of the 224 cards involved in this case were authenticated by the employees who had signed or otherwise executed them.

[15] The appropriate bargaining unit, as stipulated, is:

> All production and maintenance employees employed by Respondent Employer at its York, Pennsylvania facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The remaining 43 cards were authenticated by employees Dennis Leber, Eugene Reever, Greta Shimmel, Arlie Nafziger, Lawrence McFatridge, and Stanley Kinard. See also Appendixes A, B, C, D, E, and F annexed to counsel for the General Counsel's brief. Thus, employee Leber credibly testified that he had attended union meetings starting in early March 1994; that Union Representative Joe Pozza made blank cards available; and that Pozza

> told us by signing the card you are asking the Steelworkers to represent you . . . to do bargaining with the Company . . . we were told to tell [the employees] that it's for representation for bargaining . . . .

Leber credibly and sufficiently identified his card and the cards of 11 coworkers. He recalled: "I told them that by signing a Union card they're asking the Steelworkers to represent them for the purposes of getting a contract . . . ." Leber acknowledged that "sometimes" the subject of "an election" "came up" in discussing the cards with coworkers. Leber testified:

> Q. Did you tell them that the card would be turned over to the NLRB who would in turn run an election?
>
> A. I told them that's a possibility if they're not recognized by the Company.

In like vein, employee Reever credibly and sufficiently identified his card and the cards signed by five coworkers. He recalled having been told by the Union's representatives: "if we are interested in a Union they desired to represent us," and "we would probably have to get through . . . a Union election . . . because . . . most companies would not recognize a Union on simply cards alone if you get 51 or 52 percent . . . ." He recalled that card signer Viola Kerrigan had asked: "if I sign a card how quick would we get a Union in here." He responded: "we would probably have to get through . . . an election process." And, employee Shimmel also credibly and sufficiently identified her card and the cards signed by five coworkers. She recalled Union Representative Pozza stating that the "purpose" of the cards was "we wanted" the Union "to represent us." She testified:

> Q. Do you recall what you told them [the card signers] if anything about the purpose of the card?
>
> A. The purpose of it is what I said before . . . about the Steelworkers . . . helping us get organized . . . to have the Steelworkers come in . . . .

She further testified on cross-examination:

> Q. . . . . Did you tell any employees that the purpose of the cards was to hold an election?
>
> A. To bring the Union in . . . yes. . . . . I explained to all of them what the purpose of it was, and the purpose was for the Union . . . that we want help . . . that we need someone to represent us . . . for a labor agreement . . . .

In addition, employee Nafziger credibly and sufficiently identified his card and the eight cards signed by coworkers. He recalled that Union Representative Pozza had said:

> [T]he card was . . . to be signed by employees so that we could be represented by the United Steelworkers Of America and if we had a certain percentage of cards signed . . . we could have an election . . . .[16]
>
> And, employees McFatridge and Kinard also credibly and sufficiently identified their own cards and the cards signed by nine and five co-workers, respectively. McFatridge recalled telling employees that the card "was to have the Steelworkers represent us in bargaining." Kinard recalled that Union Representative Pozza had explained the "purpose" of the card as follows:
>
> He [Pozza] told us that we sign a card asking the United Steelworkers of America to come in and represent us in the bargaining process with Campbell Chain . . . .

See also the corroborating testimony of Union Representative Joseph Pozza, Tr. 159.

In addition to the above testimony, it is undisputed that Respondent Employer, on or about April 19, 1994, over 3 months before the cards were submitted to the Board's Regional Director, notified the unit employees in writing (G.C. Exh. 25):

> **Don't be misled into signing a Union card**. By signing one of these cards, you are authorizing the Union to represent you and speak for you in all your dealings with the Company. Don't let anyone tell you it's just to get an election. Don't sign one just to get someone to leave you alone. Don't let anyone tell you it's just to get better benefits. A signed card can be used by the Union to get the right to represent you **WITHOUT AN ELECTION** and may, ultimately, obligate you to pay Union dues, fees and assessments.
>
> There is one important thing you should know if you are approached by someone representing the Union. The law guarantees you the right to be free from harassment and interference if you choose not to become involved or bothered by union supporters. It also guarantees you the right to speak against the Union if you desire. If anyone tries to interfere with your rights, please contact me [Director Brindisi] or anyone else in Management for help. [Emphasis in text.]

Appendix A to this decision shows that about half of the 224 cards were signed or executed after April 19, 1994. Further, this record does not credibly establish any attempt by the 224 employees to revoke or withdraw their union designations.

I have reviewed the record testimony pertaining to the above 43 cards. These 43 cards were sufficiently and credibly authenticated by Leber, Reever, Shimmel, Nafziger, McFatridge, and Kinard as discussed above. I find that these 43 employees executed valid and voluntary designations of the Union as their representative for collective bargaining, as enumerated in Appendix A, B, C, D, E, and F of counsel for the General Counsel's brief.

Counsel for the General Counsel, in pages 133 to 137 of their brief, note that some 108 employees—including employees Dennis Leber, Eugene Reever, Greta Shimmel, Arlie Nafziger, Lawrence McFatridge, and Stanley Kinard, whose credible testimony is summarized above—testified that they read and signed their own cards. See Appendix G to counsel for the General Counsel's brief, listing the names of these employees.

[16] I note that one of Nafziger's cards, that of David Shultz, is undated; however, the record shows that this card was received by the Board's Regional Office on July 25, 1994. See also the cards of Faye Beaverson, Shea Hurley, and Robert Stover, which cards I find to have been duly executed during the above campaign by July 25, 1994.

ployees. Thus, for example, as the credible evidence of record shows, employee Jeffrey Anderson read and signed his card. Employee Linda Anderson read and signed her card. She explained: "It's a card showing that I agree to have the Union represent me." Employee Shirley Bates read and signed her card. She denied on cross-examination that she was told "that the card was for an election." Employee Jeffrey Beam read and signed his card. He too was asked on cross-examination:

> Q. Were you told that the card you were given was to be used for the purposes of an election?
> A. No.

Employee Jeffrey Blouse read and signed his card. He was asked on cross-examination:

> Q. Did Mr. Walker explain that the card would be used for an election?
> A. . . . . No, he explained to me that the card was voting for the Union.
> Q. By signing the card you had voted for the Union?
> A. Yes, I did, because I read the card.

Employee James Buckingham read and signed his card. He was asked on cross-examination:

> Q. Where were you when Greta [Shimmel] gave you the card?
> A. I don't remember.
> Q. . . . . Did she tell you it was for an election?
> A. No.
> Q. Did she mention election?
> A. No.
> Q. Did she threaten you in any way?
> A. No.

Employee Brian Crumbling identified his card as "a Union card" signed by him "to be represented by the Steelworkers Union." He denied on cross-examination being threatened, and further testified:

> Q. Did he [the card solicitor] tell you that the purpose for signing the card was to have an election?
> A. He said it was to have an election but that wasn't the only reason . . . .

Employee Larry Fake read and signed his card. He explained that his card solicitor "told me it was for an election," but he was also told that it was for union representation.

Employee Glenn Hake read and signed his card. He testified on cross-examination:

> Q. And did Walker tell you that you needed to sign the card to bring it to a vote?
> A. Yes.
> Q. Did he tell you anything else?
> A. Just that they needed 75 percent of the people to bring it to a vote.
> Q. Are you sure you read it before you signed it?
> A. Yes.

Employee Robert Hake read and signed his card. On cross-examination, he testified:

> Q. Did Austin Miller tell you to sign the card?
> A. No, he didn't tell me to sign it.

Counsel for Respondent Employer then read from Robert Hake's prehearing questionnaire:

> My boss told me, Austin Miller, that this is a card to [sign] and told me that they would like to [sign] no. But you can see I [sign] yes. We need a Union. They are getting out of hand in Campbell Chain. Thank you. Please try to help us.

On further cross-examination, Robert Hake explained that Miller did not give him the card although Miller "told me to vote no, to write no on the card, and I would make my own decision."

Employee John Heiner read and signed his card. He testified on cross-examination:

> Q. . . . Why did you sign the card?
> A. I signed the card because I wanted to learn more about this Union and see what they could do for us . . . .
> Q. Did you understand that by signing this card you would be automatically represented by the Union?
> A. Yes I did . . . .

Employee Cindy Hengst read and signed her card. She too explained on cross-examination:

> [W]hen I signed my card . . . I was signing for a Union . . . .

Likewise, employee Linda Orr read and signed her card. She testified on cross-examination:

> Q. . . . . Isn't it true that Ruth Orr told you that the purpose of this card was to have an election?
> A. No, Ruth told me that the purpose of this card was . . . if I wanted to sign . . . they would bargain for me . . . she did not say there would actually be an election . . . .

Allen Shirey signed his card, and explained on cross-examination:

> [T]his shows interest in the Union . . . we were interested . . . .

See also the remaining cards similarly identified in Appendix G of counsel for the General Counsel's brief, supra. I have reviewed the record testimony of the 108 card signers listed in Appendix G of counsel for the General Counsel's brief, including those cited and discussed above, and I find on this record that these employees also sufficiently and credibly identified and authenticated their cards as valid and voluntary designations of the Union to be their collective-bargaining representative.

Counsel for the General Counsel next acknowledge, as shown at pages 133 to 134 and in Appendix H of their brief, that some "46 of the witnesses called to authenticate their cards testified . . . that they were told or signed their card for an election."[17] A fair reading of their testimony, however, does not establish that they were told to disregard the clear language on their cards designating the Union as their representative. On the contrary, the 47 employees listed in Appendix H to counsel for the General Counsel's brief (see fn. 17, supra), by executing their cards, were clearly designating the Union as their collective-bargaining representative. Thus, for example, employee William Althoff testified that he read and signed his card. He recalled that employee Kinard gave him his card. He denied that Kinard told him "that it was to allow for a vote in the Un-

[17] I note that Appendix H to counsel for the General Counsel's brief in fact lists 47 employee card signers. This one card difference is not material here.

ion election." He had acknowledged in a prehearing questionnaire:

> Q. What if anything were you told concerning the purpose of the card?
> A. To allow a vote for representation by USW Union.

He explained on cross-examination:

> Q. Why did you fill out your questionnaire that way?
> A. Because that's what this was all about. We needed enough cards signed . . . for Union representation and you guys had the choice of whether there was a vote for it or not . . . .

Employee Rod Anderson testified that "it's a Union card I signed authorizing [or] giving authorization to try to get a Union vote . . . or have the Steelworkers represent us . . . ." Employee Reever gave him his card. Anderson testified on cross-examination:

> Q. And he [Reever] told you that it was for a Union vote, didn't he?
> A. Well, not for a Union vote, but it was to make application . . . so that we could petition the Company . . . we had to have enough signatures before we could petition them . . . .

Reever had told him that "they'd like to have a few more" "to petition for" a "Union vote." Further, Anderson explained on cross-examination: "I signed the card to get Union representation."

Employee Constance Arnold testified that she read and signed her card. She too was asked on cross-examination:

> Q. And she [the card solicitor co-employee Ruth Orr] told you that if you had enough cards we would be able to vote for a Union?
> A. She didn't tell me that, that was my understanding.
> Q. . . . .When you signed the card did you sign it to get a vote?
> A. I signed it to have the Steelworkers represent me.

Employee Laura Belt testified that coworker Linda Anderson gave her her union card. Belt read and signed the card. Belt testified on cross-examination:

> Q. Did she [Anderson] tell you it was for an election?
> A. Basically, yes.
> Q. And did you ask her if it was for representation?
> A. [Y]es.
> Q. And did she say it wasn't for representation?
> A. Not off . . . not automatically.
> Q. She said it was to be used for an election?
> A. Basically, yes.

Employee Paul Blymire read and signed his card. He "sign[ed] up for the Union." He testified on cross examination:

> Q. Do you recall being told that it was for an election?
> A. [S]omebody told me . . . they were going to try to have a vote on it.

Employee Donald Bortner read and signed his card. He too testified on cross-examination:

> Q. Did he [the card solicitor] tell you that the only reason that you needed to sign the card [was] to get an election?
> A. No. He just asked me if I'd sign the Union card . . . .
> Q. When you signed it, did you sign it to be represented by the Union?
> A. Yes.

Employee Randy Coy read and signed his card. He testified on cross-examination:

> Q. What did he [the card solicitor] tell you about it?
> A. . . . . [H]e just said just to see if there was enough interest.
> Q. To get an election?
> A. Yes.
> Q. . . . . So that was the only purpose for the card?
> A. No, he did not. He told me to read the card and then decide for myself.

Employee Richard Elliot read and signed his card. He had stated in a prehearing questionnaire that he was "told" that the "purpose" of the card was "to obtain enough cards to hold an election." He explained on cross-examination:

> I don't think I was told that. . . . I just assumed that is what it was for. . . . I don't think I was told anything. I think I know enough about Union cards to know what they are for. . . . To represent me in collective bargaining and to obtain an election. That is what I understood . . . .

Employee Randy Hengst read and signed his card. He also told his coworkers:

> [This is a] head count for how many people were interested in getting a Union in here . . . .

Employee Scott Ilgenfritz read and signed his card. He recalled on cross-examination that Union Representative Pozza had said that "it was to register with the Union." He had stated on his prehearing questionnaire that "we can have the right to vote for a Union." He explained on cross-examination:

> What I should have put [on that form] is . . . to be represented by the Union . . . . The way I understood it was to be represented by the Union . . . .

He explained that he "intend[ed] to have the Steelworkers represent [him]."

Employee Willeas Jimerson read and signed his card. He was asked on cross-examination "why did [he] sign it." He explained that "he wanted to hear more about the Union" and "wanted to be represented by the Union." Employee Shirley Leland read and signed her card. She testified on cross-examination:

> Q. Did he [the card solicitor] tell you it was for an election?
> A. Yes.
> Q. Did he tell you it was for a vote?
> A. Yes.
> Q. Is that why you signed it?
> A. Yes.

She later explained that at the time she "signed the card" she wanted the "Steelworkers to represent" her.

Employee Daniel McMaster read and signed his card. McMaster explained on cross-examination that he was told by his card solicitor: "If enough cards are signed there would be an election." Employee Ruth Orr read and signed her card. She

acknowledged on cross-examination that a union representative had told her that "it was just to get the vote" and she told this to coworkers. She was later asked:

> Q. Did you intend to have the Steelworkers represent you at the time?
>
> A. Yes.
>
> Q. And do you recall what you told other employees who you gave cards to?
>
> A. All I said was we are trying to get a Union in here for collective bargaining for us.

See also the remaining cards similarly identified in Appendix H of counsel for the General Counsel's brief, supra. I have reviewed the record testimony of the 47 card signers listed in Appendix H of counsel for the General Counsel's brief, including those cited and discussed above, and I find on this record that these employees sufficiently and credibly identified and authenticated their cards as valid and voluntary designations of the Union to be their collective-bargaining representative. As demonstrated, a fair reading of their testimony, assessed in the context of this full record, does not establish that they were told to disregard the clear language on their cards designating the Union as their representative.

Counsel for the General Counsel next acknowledge at pages 134 to 137 of their brief that "ten employees stated as part of their testimony that they were told that the authorization card would only be used for an election or words to that effect." See Appendix I to counsel for the General Counsel's brief. Here, too, as discussed below, a fair reading of their testimony, assessed in the context of this full record, persuades me that their cards are also valid and voluntary designations of the Union as their collective-bargaining representative. Thus, employee Ted Brown read and signed his card. On cross-examination, Brown testified:

> Q. Did they tell you that your card was for the purposes of an election?
>
> A. Yes.
>
> Q. Did they tell you your card was just to get a vote in?
>
> A. Yes.
>
> Q. Did they tell you that . . . if you signed the card it would only mean there would be a vote?
>
> A. No. . . .
>
> Q. What did they say?
>
> A. They said . . . my recollection . . . it was to get a Union to help represent the problems we were having.
>
> Q. And did you sign the card to be represented by the Union?
>
> A. Yes.

I find that Brown's card was also a voluntary and valid designation of the Union as his collective-bargaining representative.

Employee Donald Buckingham read and signed his card. On cross-examination, Buckingham testified:

> Q. And when he [Union representative Pozza] handed it [the card] out [at the Union meeting], did he tell you that if you signed it it would be for an election?
>
> A. Yeah, they said if they got enough cards they would come in for an election.
>
> Q. Did they tell you anything else about the card?
>
> A. Yeah, they explained that the card was, you know, just for an election. They got 200, they had to have so many percentage, they said, before they would come in for a vote.

Elsewhere, he testified:

> Q. Did they use the term just for an election?
>
> A. I don't remember.

Buckingham later acknowledged that no one at the union meeting where he had received his card had told him "to not pay any attention to the language in that card." I find on this full record that Buckingham's card was also a voluntary and valid designation of the Union as his collective-bargaining representative.

Employee Roger Davidson read and signed his card. He was asked on cross-examination: "Did Jeff Anderson tell you the card was only for a vote." He responded:

> That sounds, yeah, I think it was only for a vote, I think, I don't know to tell you the truth, I don't remember, that is almost what?

He later explained that "at the time [he] signed the card" he "intend[ed] to have the Union come in." He also reluctantly acknowledged that he had stated in his prehearing questionnaire that he had been told that the "purpose" of the card was "to get a Union started in the plant." I find on this full record that Davidson's card was also a voluntary and valid designation of the Union as his collective-bargaining representative.

Employee Stacey Eckenrode read and signed his card. He claimed that he did not then intend to have the Union "represent" him and he "was told it was for a vote." On cross-examination he was repeatedly asked: "[Y]ou were told that it was only for a vote." He responded: "Yes" or "Uh hum." Elsewhere, he testified:

> My dad said it was just to give everyone a fair chance to vote . . . .
>
> He said that if more than half the people filled out the card then everyone has a vote. The card didn't mean if you wanted the Union or not.

Elsewhere, he testified:

> Q. Do you recall who gave you the card?
>
> A. No, I think it was on my desk where I worked.
>
> Q. . . . . So no one told you anything when they gave you the card, is that correct?
>
> A. No . . . no one told me nothing.
>
> Q. The conversation you had with your father, when did that occur, do you recall?
>
> A. I asked him . . . I was fairly new there . . . I wasn't sure what I should do and he was there like for 25 years, so I talked to him after I got the card, before I filled it out.
>
> Q. To your knowledge did your father sign a card?
>
> A. Yes.

I find on this full record that Eckenrode read and signed his clear and unambiguous card on July 6, 1994, authorizing the Union to represent him, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." See *Advanced Mining Group*, supra.

Employee Wilson Gonzales read and signed his card. On cross-examination he was asked: "Did [the card solicitor] tell you it was only for an election." He responded: "Yeah." Later, he acknowledged that "at the time [he] signed the card [he]

want[ed] the Union to come in." I find on this full record that Gonzales' card was also a voluntary and valid designation of the Union as his collective-bargaining representative.

Employee Bruce Hohenadel read and signed his card. On cross-examination Hohenadel testified:

> Q. Did he [the card solicitor] tell you the card was for the purpose of having an election?
>
> A. Yes.
>
> Q. Did he tell you anything else?
>
> A. No, other than, well, he needed, it was just for a certain percentage of the people for a vote, for it to go to a vote.
>
> Q. Did he tell you anything else?
>
> A. No.
>
> Q. Did you understand that you were signing a card [for] an election?
>
> A. Yes.

Later, Hohenadel acknowledged that he "understood" that he was "signing a card for Union representation" and that his card solicitor did not "tell [him] to disregard the language on that card." As he put it, "I don't believe so. . . ." Later, he testified on further cross-examination:

> Q. Didn't he just say sign this so that we can have an election?
>
> A. I don't know if that is how he put it exactly.
>
> Q. Words to that effect?
>
> A. I am not sure.

I find on this full record that Hohenadel's card was also a voluntary and valid designation of the Union as his collective-bargaining representative.

Employee Stewart Leland read and signed his card. He testified:

> Q. Did you read the card before you signed it?
>
> A. I glanced at it, I didn't really look at it close enough.
>
> Q. Did anyone tell you anything about the card before you signed it?
>
> A. No, not really.
>
> Q. At the time you signed it did you intend to have the Union represent you?
>
> A. It was my understanding it was for a call for an election only.
>
> Q. Were you told that?
>
> A. In so many words, yes, but not directly.
>
> Q. Did anyone tell you to disregard the language on that card?
>
> A. No sir.

Leland is currently a supervisor. And, on this full record, I find that Leland also read and signed his clear and unambiguous card on April 20, 1994, authorizing the Union to represent him and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid.

Employee Dale Stambaugh read and signed his card. On cross-examination he testified:

> Q. And he [the card solicitor] told you it was for an election, didn't he?
>
> A. Yes.
>
> Q. Did he tell you anything else besides that?
>
> A. Absolutely not. No more than he said, it is just showing, you know, if the Union comes in, they either come in or they don't, whatever the vote shows.

He too had not been told "to disregard the language on that card." And, on this full record, I find that Stambaugh also read and signed his clear and unambiguous card authorizing the Union to represent him and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid.

Employee Collen Wambaugh read and signed his card on May 5, 1994. He testified on cross-examination:

> Q. Did anyone tell you what the card was for?
>
> A. Roundabout, and rumors, like people talking together, I mean, if I was interested, I wanted to find out more information about it, that is the only way to do it, get on a mailing list, go to meetings and see what they had to say.
>
> Q. Did you sign the card because you wanted to be a member of the USW?
>
> A. No, at that point, no.

He later explained that he had "heard" "if so many cards came it would have to come up as an election, be voted on." However, no one "told [him] not to pay any attention" to the card language. Here too, on this full record, I find that Wambaugh also read and signed his clear and unambiguous card authorizing the Union to represent him and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid.

Employee Terry Welsh read and signed his card. On cross-examination he testified:

> Q. Did he [the card solicitor] tell you it was only for an election?
>
> A. Yes.
>
> Q. Is that why you signed it?
>
> A. Yes.

Elsewhere, he testified:

> Q. Did you sign it intending to be represented by the Steelworkers?
>
> A. Yes.
>
> Q. You've now changed your mind?
>
> A. Yes.

I find on this full record that Welsh read and signed his card intending to designate the Union as his representative. I find that Welsh's card was also a voluntary and valid designation of the Union as his collective-bargaining representative.

In short, with respect to the 10 cards listed in Appendix I of counsel for the General Counsel's brief, and with respect to the additional 198 cards listed in Appendix A through H of counsel for the General Counsel's brief, discussed above, the credible evidence of record amply demonstrates here that the employee card signers should be bound by the clear and unambiguous language of their cards and that the clear language of their cards was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and for-

get the language above his signature . . . .” For, as stated, “there is nothing inconsistent in handing an employee a card that says the signer authorizes the Union to represent him and telling him that the card will probably be used first to get an election.” Further, to the extent that some card signers, often on cross-examination in response to leading questions, acknowledged being told an “election” purpose of their cards, does not persuade me that their cards were not valid and voluntary designations of the Union for representation purposes. These often vague “employee thoughts or afterthoughts as to why [an employee] signed a Union card and what he thought that card meant cannot negative the overt action of having signed the card . . . .” And, of course, where, as here,

> employees testify under the eye of Company officials about card signing events which occurred much earlier and prior to Company activities that constituted unfair labor practices, there is wisdom in requiring fairly strong evidence of misrepresentation before adjudging the signed cards invalid . . . . For, it is certainly conceivable that the same threats and benefits which shook an employee’s original support of the union also altered the employee’s memory of the events that occurred before the presentation of such threats and benefits
> . . . .

“[T]he crucial question . . . is whether the union had the support of a majority of the employees in an appropriate unit at the time the request to bargain was made,” and the credible evidence of record makes it clear that was the case here. See *Advanced Mining Group*, supra.

Accordingly, I have found above that 208 of the 393 unit employees, a clear majority, voluntarily executed valid designations of the Union as their collective-bargaining representative by July 25, 1994, when the Board’s Regional Office received the cards. However, for the benefit of reviewing authority, I turn to the remaining 16 cards. At the outset, I note that 3 of the remaining 16 employees—employees Vince Clayton, Gary Lockard, and Joyce Shirey—did not in fact sign their cards. See counsel for the General Counsel’s brief, pages 142 to 143. Employee Clayton credibly explained that he read his card and filled out his card but

> I guess I just forgot to sign it . . . .

Clayton, as he acknowledged, “intend[ed] to have the Steelworkers represent [him] at the time [he] filled that card out,” The credible testimony of employees Lockard and Shirey is to the same general effect. See Appendix K to counsel for the General Counsel’s brief. I find that the cards of these three employees were also clear and unambiguous designations of the Union as their collective-bargaining representative and their inadvertent failure or oversight to sign their names should not invalidate their designations for card majority computation purposes. In short, they too had sufficiently indicated at the time that they too wanted the Union to represent them.

Further, counsel for the General Counsel acknowledge that “12 employees . . . testified they did not read their card . . . .” See counsel for the General Counsel’s brief, Br. 137 to 142, and Appendix J to their brief. The question is whether or not these 12 employees also voluntarily designated the Union as their collective-bargaining representative by signing their cards. Thus, employee Faye Beaverson signed her card about June 1994; she assertedly “didn’t read it”; she did, however, fill in required information on the card. She testified on cross-examination:

> Q. Who gave you your card . . . .?
> A. Stanley Kinard.
> Q. Did he tell you it was for an election?
> A. No, no.
> Q. Did he give you any explanation as to the purpose of the card?
> A. No.
> Q. He handed it to you without saying a word about it?
> A. No, but I knew about the card. No, he didn’t say anything.
> Q. Did he pressure you in any way to sign the card?
> A. No, he didn’t.
> Q. Did he mislead you in any way?
> A. No, he didn’t.

I find on this full record that Beaverson voluntarily signed a clear and unambiguous card designating the Union as her collective-bargaining representative, and that this clear and unambiguous card language was not “deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above [her] signature . . . .” Ibid.

Employee Gary Brehm testified that he signed his card but “didn’t” “read the card before [he] signed it.” He explained:

> Q. . . . . Did you understand the card?
> A. No. All I heard was it was a petition for a Union, and I signed the card.
> Q. . . . . Do you recall who gave you the card?
> A. Curvin Wolfgang.
> Q. And what did he explain to you about the card, do you recall?
> A. Nothing.

On cross-examination he was asked if Wolfgang told him that “it was for an election,” and he responded: “yes.” I find that Brehm voluntarily signed a clear and unambiguous card designating the Union as his collective-bargaining representative, and that this clear and unambiguous card language was not “deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . .” Ibid.

Employee Denise Caswell testified that she signed her card, but she did not “read the card before [she] signed it.” She testified:

> Q. Did you understand the card?
> A. I understand it. I worked for a Union before.

I find that Caswell voluntarily signed a clear and unambiguous card designating the Union as her collective-bargaining representative, and that this clear and unambiguous card language was not “deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above [her] signature . . . .” Ibid.

Employee Annette Dowling testified that she signed her card, but she too did not “read the card before [she] signed it.” She explained:

> Q. Did you intend for the Steelworkers to represent you at the time you signed the card?
> A. Yes.

On cross-examination she acknowledged that her card solicitor, Ruth Orr, told her "the card was to get an election" and "if she signed the card there would be a vote." I find that Dowling also voluntarily signed a clear and unambiguous card designating the Union as her collective-bargaining representative, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above [her] signature . . . ." Ibid.

Employee David Force testified that he signed his card. He explained:

> I didn't read it, but I went to a lot of meetings, so I knew what it was all about . . . this card was for the Union to represent us . . . .

On cross-examination he acknowledged that his card solicitor "probably said" "how [they needed] a certain percentage to have an election." He explained, "that is not why I signed the card." I find that Force voluntarily signed a clear and unambiguous card designating the Union as his collective-bargaining representative, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid.

Erik Mann testified that he dated and signed his card, but "truthfully" did not "read" it before he "signed it." He, of course, did read "what [he] was filling out" on the card, and he "knew what it was." He testified:

> Q. Did you intend for the Union to represent you when you signed the card?
>
> A. At the time, yes.

I find that Mann also voluntarily signed a clear and unambiguous card designating the Union as his collective-bargaining representative, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid.

John Masenheimer testified that he dated and "signed" his card but did not "read it" before he "signed it." He "understood" that the "purpose" of the card was "to vote to get a Union in." However, he "intend[ed] for the Union to represent" him when he "signed" it. On cross-examination he was asked if his card solicitor had told him that "it was for an election," and he responded: "Yeah." I find on this full record that Masenheimer also voluntarily signed a clear and unambiguous card designating the Union as his collective-bargaining representative, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid.

Ruthetta Ness testified that she signed her card but did not "read" it before she "signed" it. Her card solicitor did not tell her that "it was for an election" and she "just assumed it was for the Union." In response to counsel for Respondent's question: "Was it your understanding that it was for a Union election," she responded: "yes." Elsewhere, she explained that she "intend[ed] for the Union to represent" her when she "signed" the card. On "recross" she was asked: "Did you sign the card so that there could be a vote to determine whether the Union would represent you," and she responded: "yes." I find on this full record that Ness also voluntarily signed a clear and unambiguous card designating the Union as her collective-bargaining representative, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above [her] signature . . . ." Ibid.

Clifford Peters identified his "Union card" with his signature and date. He claimed that he did not "read" it before he had signed it and did not "understand the purpose of the card." He, however, had been a union member "before," and had attended union meetings with the Steelworkers representatives "on or around the time" when he signed his card. He testified:

> Q. Do you recall what they told you?
>
> A. They said they wanted cards signed to have a vote.
>
> Q. To have a vote. Did they say anything else?
>
> A. Nope.

He further testified that his card solicitor, Jerry Walker, told him "to sign the card to say they could have a vote," but he did not "intend" for the Union to "represent" him when he had "signed." Elsewhere, in response to a question, he generally acknowledged that he was told that "they wouldn't represent" him and "it was only for a vote." When specifically asked, "How did they say that," he responded:

> They said the intent was to get enough cards signed so that they could have a vote . . . .

They said that the reason they wanted the cards signed was because they had to have a certain percent in order to have a vote.

I find on this full record that Peters also voluntarily signed a clear and unambiguous card designating the Union as his collective-bargaining representative, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid. After carefully scrutinizing his testimony, assessed in the context of this full record, I am not persuaded that he was told by a union adherent that "they wouldn't represent" him and "it was only for a vote." In short, I do not credit or find here that his card solicitor or solicitors had in fact impermissibly misrepresented the purpose of this card.

Richard Shindel testified that he "glanced at" but "didn't read" his union card before he "signed it." He recalled: "I had asked if it was just a referral card, if you were interested in the Union, and I asked for the card." On cross-examination he testified:

> Q. Was there a discussion before he [Curvin Wolfgang, the card solicitor,] gave you the card?
>
> A. To my recollection, it was just a referral, if you were interested in the Union.
>
> Q. Did Mr. Wolfgang tell you that the purpose of the card was for an election?
>
> A. No.
>
> Q. Did he tell you it was for a vote?
>
> A. No.

He had answered a prehearing questionnaire:

> Q. What if anything were you told . . . concerning the purpose of the card?
>
> A. To see if there were enough people interested in a Union so a vote could be taken in the plant. I was told I could vote yes or no, and I chose no.

He was asked on cross-examination:

> Q. And is that what Mr. Wolfgang said to you?
> A. I was under the impression it was just to [see] if you were interested in the Union.

Elsewhere, he acknowledged that when he "signed" he was "interested in the Union." I find on this full record that Shindel also voluntarily signed a clear and unambiguous card designating the Union as his collective-bargaining representative, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid. He had asked for his card; he was "interested" in the Union; and he was told that it was "to see if there were enough people interested in a Union so a vote could be taken in the plant." Under the circumstances, I do not find here that the clear purpose of this card was misrepresented to him.

Timothy Wallace testified that he dated and signed his card. He testified:

> Q. Did you read the card before you signed it?
> A. No. I really didn't go over the card. I was a bit angry at the time and I grabbed the card and signed it.
> Q. . . . .Was it your intent to have the Steelworkers represent you at that time?
> A. No, well, I was, like again, I didn't really want the Union to start with, but I was angry and I signed the card . . . .

Later, he explained:

> At the time I intended when I signed this for the Steelworkers to come in . . . but I was very angry with the Company, and like a wheel there was something broken with the Company . . . and now they [the Company] fixed it and it is running rather well . . . .

On cross-examination he further testified that his card solicitor had said that the card

> was to get basically a head count . . . then the Union would understand whether they could come in or not . . . .

I find on this full record that Wallace also voluntarily signed a clear and unambiguous card designating the Union as his collective bargaining representative, and that this clear and unambiguous card language was not "deliberately and clearly canceled by a Union adherent with words calculated to direct the signer to disregard and forget the language above his signature . . . ." Ibid. His testimony, as well as the cited testimony of various other cosigners of cards, demonstrates that

> [W]here employees testify under the eye of company officials about card signing events which occurred much earlier and prior to company activities that constituted unfair labor practices, there is wisdom in requiring fairly strong evidence of misrepresentation before adjudging the signed cards invalid. For, it is certainly conceivable that the same threats and benefits which shook an employee's original support of the union also altered the employee's memory of the events that occurred before the presentation of such threats and benefits . . . . .[Ibid.]

Finally, with respect to this group of 12 card signers, Mary Wolfe testified that she dated and signed her card. She insisted that she had not "read the card" before she signed it. She claimed that

> the impression I had when I signed it was the card was to justify I was at the [Union] meeting.

She was asked: "Was that told to you or was that just your impression." She replied:

> well that's what I got out of the way they were saying.

Elsewhere, she acknowledged that no one "actually" said that to her. She also acknowledged that she "might have" also "sign[ed] a sign-in list when [she] went to the [Union] meeting." In response to questioning by counsel for Respondent, she agreed that she did not then want to be "represented" by the Union. Here, too, on this full record, I find that this employee "should be bound by the clear language of what [she] sign[ed] and that language [was not] deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above [her] signature . . . ." Ibid. Further, here, too, the "employee's thoughts or afterthoughts as to why [she] signed a union card and what [she] thought that card meant cannot negative the overt action of having signed the card . . . ." For, again, as restated above,

> where employees testify under the eye of company officials about card signing events which occurred much earlier and prior to company activities that constituted unfair labor practices, there is wisdom in requiring fairly strong evidence of misrepresentation before adjudging the signed cards invalid . . . .

There remains for consideration the card of employee Tamara Wise. She read and signed her card on July 14, 1994. Employee Stanley Kinard gave her the card. She felt "somewhat" "pressure[d]" by Kinard "with regard to the card." She testified on cross-examination:

> He [Kinard] . . . more or less said, well, I have a lot of family that works at Campbell Chain and he kept telling me that I was the only one in my family that didn't sign a card . . . . So I was just in a hurry to get rid of it because I didn't want anyone to see me sign it and I thought it was going to be kept confidential . . . .

Later, on redirect examination, she testified:

> Q. [W]here you told that it was only for interest or was that your understanding?
> A. That is what Stan told me, that it was just that I was interested in listening to them.

Her testimony, assessed in the context of this full record, does not credibly and sufficiently show that impermissible misrepresentations were made to her or that she was in some manner impermissibly pressured into signing her card. She too should be bound by the clear and unambiguous language contained in the card.

In sum, I find that the above 224, or, as counsel for the General Counsel count in their brief (Br. 145 and fn. 17, supra), 223 cards should be counted in determining majority status for purposes of a remedial bargaining order. Accordingly, a majority of Respondent Employer's employees in an appropriate unit had designated and selected the Union as their representative for the purposes of collective bargaining; Respondent Employer's unfair labor practices are so serious and substantial in nature that the possibility of erasing their effects and conduct-

ing a fair and free representation election or rerun representation election by use of traditional remedies is slight; and, consequently, the employees' sentiments regarding representation having been expressed through union authorization cards would on balance be protected better by issuance of a bargaining order than by traditional remedies.[18]

Counsel for Respondent Employer cites "225 cards offered by the General Counsel" in the appendix to his posthearing brief (Br. 7). See also the chart of authorization cards appearing on pages 4 through 14 of his brief. The additional card cited by counsel for Respondent Employer is that signed by Kelly Brenneman on July 18, 1994. Brenneman, called as a witness for Respondent Employer, testified:

> Q. What did Mr. Walker [Jerry Walker] tell you about the card?
>
> A. What he told me was the purpose of the card was just to get enough signatures in for the Union to have a secret election. It did not mean that I was for or against the Union, and that I could change my mind when the election came in.
>
> Q. Did he make any other statements?
>
> A. He me [sic] on occasion, when he was waiting for me to sign the card, that if I did not, things could get a little rough at work. People would not associate with me or talk to me.

Counsel for the General Counsel asserted that Jerry Walker "is terminally ill . . . precluding his appearance." See Tr. 2654 to 2661. Further, counsel for the General Counsel apparently does not rely on this 225th card in their posthearing brief in computing majority status. Nevertheless, for the benefit of reviewing authority, on this showing, I would not count this card in determining majority status. See *Advanced Mining Group*, supra. Brenneman's unrefuted testimony distinguishes the events attending this card solicitation from those of Brenneman's coworkers as detailed above. Brenneman's unrefuted testimony—although somewhat suspect when assessed in the context of the testimony of his coworkers—sufficiently shows "words calculated to direct the signer to disregard and forget the language above his signature." Ibid.

Counsel for Respondent Employer next argues (Br. 15 to 17) that "none of the authorization cards admitted may be counted in determining whether the Union represented a majority of employees due to the explanation of the purpose of the cards given by Union representative Joe Pozza." The credible evidence of record detailed above does not support this assertion. Counsel for Respondent Employer next argues (Br. 18 to 19) that "the authorization cards of employees whose testimony differed from their questionnaire answers must not be counted." As demonstrated above, I have taken into account variations and imperfections in employee testimony recalling events many months earlier; nevertheless, on balance, there is no justification here for such a wooden and blanket resolution of credibility. Again, the credible evidence of record detailed above does not support this assertion. Counsel for Respondent Employer next argues (Br. 19 to 21) that the "three unsigned authorization cards must not be counted." For the reasons stated above, I reject this contention. The cards of these three employees were clear and unambiguous designations of the Union as their collective-bargaining representative and their inadvertent failure or oversight to sign their names should not invalidate their designations for card majority computation purposes. They too had sufficiently indicated at the time that they too wanted the Union to represent them.

Counsel for Respondent Employer next argues (Br. 21 to 37) that "authorization cards solicited on grounds they would be used to get a vote or election must not be counted." As detailed above, I have examined at length the cited cards, including those cards solicited by Ruth Orr, Jerry Walker, Dennis Leber, and Greta Shimmel, and, again, the credible evidence of record assessed in context does not sufficiently demonstrate an impermissible misrepresentation as claimed.

Counsel for Respondent Employer next argues (Br. 37) that "Robert Hake's authorization card must not be counted due to supervisory interference in its procurement." As discussed supra, employee Robert Hake testified that he had read and signed his card. On cross-examination, he testified:

> Q. Did Austin Miller tell you to sign the card?
>
> A. No, he didn't tell me to sign it.

Counsel for Respondent Employer then read from Robert Hake's prehearing questionnaire:

> My boss told me, Austin Miller, that this is a card to [sign] and told me that they would like to [sign] no. But you can see I [sign] yes. We need a Union. They are getting out of hand in Campbell Chain. Thank you. Please try to help us.

On further cross-examination, Robert Hake explained that Miller did not give him the card although Miller "told me to vote no, to write no on the card, and I would make my own decision." The credible testimony of Hake does not support this assertion.

Counsel for Respondent Employer next argues (Br. 38 to 40) that "three authorization cards of employees who were told to sign to get more information must not be counted"; the "authorization card of [an] employee who was told to verify meeting attendance must not be counted"; and the "six authorization cards signed by employees who did not read them must not be counted." As stated, I have dealt at length with these cited cards and related contentions and, on this full record, the credible evidence of record and a fair reading of the employee testimony does not support these and related contentions.

Accordingly, I reject Respondent Employer's assertion that "General Counsel has failed to establish that the Union represented an uncoerced majority of bargaining unit employees as of the critical date of July 31, 1994."

II. THE REPRESENTATION PROCEEDING

FINDINGS OF FACT

As the Regional Director's Supplemental Report on Objections and Challenges shows in consolidated Case 5–RC–14076 (G.C. Exh. 1 (u)), a secret-ballot election was conducted pursuant to a stipulated election agreement on September 16, 1994; the unit included all production and maintenance employees at the Employer's York facility;[19] there were approximately 393

[18] The bargaining order should commence effective as of July 31, 1994, since, as noted above, that was the stipulated date of the unit composition. See fn. 7, supra.

[19] The appropriate bargaining unit, as stipulated, is:

eligible voters; 176 votes were cast for the Union; 182 votes were cast against the Union; the Union challenged 23 ballots; and the Union filed timely objections to election conduct. The Union, prior to the issuance of the regional director's supplemental report, withdrew its challenge to the ballot of Tim Wallace and a number of its objections. The Union subsequently withdrew five additional challenges to ballots.[20] As noted, hearings on the remaining objections and challenges have been consolidated with the above unfair labor practice proceedings.

A. The Challenged Ballots

1. The ballots of "facilitators" Lorna Clark, Marty Rider, Kenneth Grove, and Deborah or Debbie Pelen:

Counsel for the Union argues (Br. 57 to 58) that Lorna Clark, Marty Rider, Kenneth Grove, and Deborah or Debbie Pelen are "facilitators" whose ballots "must be excluded as supervisors." Counsel for Respondent Employer argues (Br. App. pp. 43 to 68) that the above "hourly facilitators were not supervisors" and therefore the "challenges to their ballots must be rejected."[21] See also counsel for General Counsel's brief (Br. 6 to 19) dealing with this "supervisory" status issue.

As found in the consolidated unfair labor practice proceedings, supra,

> The credible evidence of record makes it clear that the above . . . "facilitators" were "supervisors". . . [The] "facilitators" worked varying hours in several departments and were thus not confined to one specific shift because of their broad responsibilities for the Employer in connection with their "team" duties . . . received for the most part substantial pay raises at the time of their appointments to this position; served as spokespersons for Management telling "team" members in effect "what is going on in the Company"; were "empowered to enact" and thus had "the authority to make decisions"; showed employees how to get their jobs done; performed essentially the same duties as salaried "facilitators" who were admittedly "supervisors" under the Act; were regarded by the Employer more like "shift coordinators" who were admittedly "supervisors" under the Act; assigned duties and lunch times to rank and file workers; approved employee vacation and sick leave requests; signed employee time cards; maintained employee attendance cards; issued verbal warnings to rank and file workers; worked out of offices; participated in planning overtime scheduling; did not "punch in" like production and maintenance workers and wrote up their own hours of work for a period of time; prepared work schedules; conducted and/or participated in employee performance evaluations; and scheduled "team" meetings and shut down production machines during those meetings.
>
> [H]ourly paid "facilitators". . . like the salaried "facilitators" . . . responsibly and effectively directed the employees in the performance of their work, having the authority to and exercising one or more of the indicia listed in Section 2(11) of the Act, and . . . the exercise of such authority was not of a "merely routine" or "clerical nature" but required the exercise by them of "independent judgment". . . .

Accordingly, for the reasons stated above, I would sustain the challenges to the four ballots cast by the above "facilitators."[22]

2. The ballots of clericals Rhonda Landis and Linda Masenheimer

Rhonda Landis and Linda Masenheimer are clericals who pick up production tickets once or twice a day, return to their office and transcribe this data. These tickets are picked up from boxes located throughout the plant, there is no significant interaction with plant production employees, they are situated in an air conditioned office away from the plant floor, they perform a purely data processing function, they report to the manager of cost accounting, they do not perform unit shift work, and they submit handwritten timecards and do not punch in like unit production workers. See stipulations and colloquy, Tr. 1517 to 1518; and the pertinent credible and essentially undisputed testimony of David Force, Tr. 1561 to 1570, 1590 to 1593, 1595 to 1596, and of Jessie Eyer, Tr. 2687 to 2690. I sustain the challenges to their two ballots. They are clericals who do not share a sufficient community of interest with the unit production and maintenance employees. See generally *Power, Inc. v. NLRB*, 40 F.3d 409, 420–421 (D.C. Cir. 1994).

3. The ballots of Joy or Julie Ide and Donna Martin

Joy or Julie Ide, as Jessie Eyer explained (Tr. 2684 to 2686), is an "accounts payable clerk," "she processes or matches invoices with accounts payable issues," she has "no" "contact" with "other employees," "she enters invoices into [the] computer system," and her "computer system" "is not a part of the same system that's used throughout the plant by other hourly employees." She also "submits handwritten time cards" and "reports to Nancy Dietz" "an accountant." See also stipulations and colloquy, Tr. 1519 to 1522. Donna Martin is also a clerk, she reports to an individual named "Munroe," a "leadperson" at the separate Stonewood warehouse, and she "keys all ware-

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All production and maintenance employees employed by Respondent Employer at its York, Pennsylvania facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

[20] They are the ballots of Herb Gordon, James Grimes, Tom Harlacher, Joseph Kile, and Wilmer Wilson. See counsel for the Union's brief, Br. 55 to 56; and counsel for Respondent Employer's appendix to its brief, Br. 42 to 43. The Regional Director, in his supplemental report, notes: "The opening, if necessary, of Wallace's ballot is to await the determination of the remaining challenges." Ibid. This deferral would also apply to the additional five challenges later withdrawn by the Union.

[21] Counsel for Respondent Employer asserts (Br. 64):

Cooper instituted a nontraditional method of operating its facility which eliminated the more traditional supervisory functions and shared responsibility for operations and administrative functions among the bargaining unit employees. Hourly facilitators were established to enable, coach, and encourage rank-and-file employees to take responsibility for daily operation of their work groups. Unlike their salaried counterparts, all of whom had been traditional supervisors, they were not clothed with any of the indicia of supervisory status . . . .

[22] Alternatively, assuming that the "hourly facilitators"—unlike the "salaried facilitators"—are not "supervisors" under the Act, I would still find that they should be excluded from the production and maintenance unit for "community of interest" reasons. See generally *Power, Inc. v. NLRB*, 40 F.3d 409, 420–421 (D.C. Cir. 1994). This record makes it clear that the special circumstances resulting in the creation of both "hourly" and "salaried" "facilitators" to oversee the work of "team" production employees, also resulted in the "hourly" "facilitators"—like the "salaried" "facilitators"—not sharing a sufficient community of interest with their underling production workers. Ibid.

house type transactions into the computer, types bills of lading and contacts shipping companies regarding [the] status of trailers." Stanley Kinard, during his 20 or more years at the facility, has never seen either Ide or Martin "on the production floor" in the main building. See the testimony of Stanley Kinard, Tr. 1597 to 1615. The above testimony is essentially undisputed and credible.[23] I sustain the challenges to Ide's and Martin's ballots. They too are clericals who clearly do not share a sufficient community of interest with the unit production and maintenance employees. See generally *Power*, *Inc. v. NLRB*, supra.

4. The ballots of Dave Gauntlett and Robert Osmolinski

Dave Gauntlett is an "electrical technician," he reports to Supervisor James Diffendarfer who supervises unit hourly maintenance employees, and he punches a timeclock. See stipulations and colloquy, Tr. 1523 to 1524. David Force testified that Gauntlett "programs the computers for welders"; "specializes in programming or something to that effect" "most of the time"; his job is not "posted"; he has an "office"; "when he programmed for the welders I [saw] him down there [on the production floor]" about "once a month"; and he has "one of a kind job." See Tr. 1523, 1558, 1561, and 1588 to 1590. Stanley Kinard testified (Tr. 1606 to 1607) that

> electricians do break-down work such as I do . . . [Gauntlett] does re-engineering of projects and updating drawings . . . he is more like an engineer . . . . Gauntlett made the electrical engineering changes on the machine when needed . . . [he uses tools] just when troubleshooting some of the major equipment that came in . . . .

Melvin Stoltzfus testified (Tr. 1818 to 1828) that Gauntlett is an "electrician T grade" "in charge of . . . electrical design on machinery . . . some procurement . . . set up of machinery and technical assistance"; he engages in "design work" and "drafting"; he has an "office"; he "comes out on the floor as needed"; and he does not "normally" "engage in hands on work with machinery." Stoltzfus explained:

> [When a machine doesn't operate and there is an electrical problem] we [the electricians] work on it. He [Gauntlett] only gets called in if there is a problem with the technical aspect of, such as the computer system or things of that nature.

I credit the above essentially undisputed testimony. And, on balance, I am not sufficiently persuaded on the showing made that Gauntlett does not in fact share a sufficient community of interest with the unit production and maintenance employees or that his duties, as claimed, "mirror" those of an "engineer" and, consequently, should therefore be excluded from this unit. See Union's brief, Br. 61 to 62. This challenge is rejected.

Robert Osmolinski was a machinist technician who has since retired. He too reported to a maintenance supervisor of unit employees. See stipulation and colloquy, Tr. 1516 to 1517. David Force testified (Tr. 1556 to 1558, 1585 to 1587) that Osmolinski "was in charge of the WAFLAS [a welder], training people and tooling, ordering the tooling"; he was the only person in the plant "working on that piece of equipment"; his job was "not posted"; he "trained" the WAFLAS "operators"; and he had an "office" which he shared with a unit leadman Jeffrey Beam. Jeffrey Beam testified (Tr. 1830 to 1834) that, from his limited observations, Osmolinski worked in the "office" 3 out of 4 hours and he would be there "with blueprints . . . talking with other employees." Beam recalled that Osmolinski wore "casual" shirts and not "T-shirts and jeans" at the plant. See also the testimony of Jessie Eyer, Tr. 2683 to 2684. I credit the above essentially undisputed testimony. Here, too, on balance, I am not sufficiently persuaded on the showing made that Osmolinski does not in fact share a sufficient community of interest with the unit production and maintenance employees. See Union's brief, Br. 61 to 62. This challenge is also rejected.

5. The ballots of Bruce Snyder, Tim Lighty, and Ron Minck

Bruce Snyder, Tim Lighty, and Ron Minck are "quality technicians"; they are in a different branch or line of authority from production and maintenance workers; their position is not "posted" and apparently requires expertise independent of production and maintenance seniority; there is no meaningful interaction with unit employees; they have air-conditioned "offices" and telephones; they park in a different lot than the production and maintenance workers; and they fill out their own timecards. See stipulations and colloquy, Tr. 1509 to 1512, and testimony of David Force, Tr. 1528 to 1545, 1570 to 1578, Jeffrey Beam, Tr. 1834 to 1836, and Jessie Eyer, Tr. 2674 to 2681. I recognize some conflicts in the testimony of Eyer and the testimony of Force and Beam, and I find the testimony of the latter witnesses to be more reliable here. In any event, the above cited testimony, including that of Eyer, amply demonstrates that Snyder, Lighty, and Minck as "quality technicians" do not in fact share a sufficient community of interest with the unit production and maintenance employees. See Union's brief, Br. 63 to 66, and Employer's brief, Br. 69 to 86. These three challenges are sustained and their ballots rejected.

6. The ballots of Chris Renner and Lance Walter

Chris Renner is an "engineering technician" who reports to the "senior project engineer" and submits "hand written time cards." See stipulations Tr. 1512 to 1514. David Force testified that he "did not see Renner on the production floor outside of the yellow lines" and he "heard [that Renner] was an engineer." See Tr. 1555 to 1556, and 1584 to 1585. Stanley Kinard testified (Tr. 1603 to 1604) that

> Renner was in charge of updating the prints and drawings and making changes and new drawings for new tooling and engineering . . . in an office underneath the west mezzanine . . . .

Jeffrey Beam testified (Tr. 1837 to 1839) that Renner wore "casual clothes" at work and Beam saw him "three to four times every six months to a year." Renner's position was apparently not "posted." The evidence pertaining to Lance Walter is essentially similar for purposes of unit determination. See Tr. 1513, 1545 to 1548, 1578 to 1581, 1594, and 1837. Compare, however, the testimony of David Bowman, Tr. 2706 to 2709. There is some apparent conflict and I find Bowman's testimony more reliable in this respect. In any event, there is no sufficient showing here in support of the Union's contention that Renner and Walter do not share a sufficient community of interest with the production and maintenance unit employees. I therefore reject these two challenges.

[23] I note that Eyer also generally claimed that Martin would have "contact" with "other hourly employees."

7. The ballots of Kit Wise and Chris Sauder

Kit Wise is an hourly metallurgical technician who reports to the manager of quality control; has specialized training; does not have any meaningful interaction with unit production workers; has a laboratory located in an air-conditioned office away from the production floor; does not wear production type clothing; supervises or oversees the work of laboratory technicians; and holds a unique type position in charge of the of the metallurgical laboratory. Compare C.P. Exh. 11, stipulation Tr. 1514 to 1517, the testimony of David Force, Tr. 1550 to 1554, 1581 to 1584, 1594 to 1595,[24] and the testimony of Jessie Eyer, Tr. 2671 to 2674, 2693 to 2696. There are, as the record shows, conflicts between the testimony of Force and Eyer in this respect, and on this record I am persuaded that Force's account is more reliable and credible. I am persuaded here that Kit Wise does not share a sufficient community of interest with unit production and maintenance workers in the performance of this unique position and, therefore, would sustain this challenge to the Wise ballot.

David Bowman testified (Tr. 2707 to 2709, 2712 to 2713) that Chris Sauder performs the following duties:

> Her primary duties are as production planner . . . she plans the purchase of certain goods that are used for product assemblies . . . she would also plan orders . . . .

Bowman explained that is "what drives our production process" and she has "minimal" "contact" with "hourly employees." She is, however, an hourly paid worker entitled to overtime. Stanley Kinard (Tr. 1610) recalled that Sauder was seldom seen on the production floor. I am persuaded from the above credible and essentially undisputed testimony that Sauder also does not share a sufficient community of interest with the unit production and maintenance employees and, therefore, would also sustain this challenge.

In sum, I have sustained the Union's challenges to the ballots of Lorna Clark, Marty Rider, Kenneth Grove, Deborah or Debbie Pelen, Rhonda Landis, Linda Masenheimer, Joy or Julie Ide, Donna Martin, Bruce Snyder, Tim Lighty, Ron Minck, Kit Wise, and Chris Sauder.

B. The Objection

As noted, the Union timely filed some 30 objections to election conduct. A number of the objections were later withdrawn. The remaining objections essentially track the unfair labor practice conduct allegations during the critical representation period, and have been discussed at length, supra. It is clear that the Employer, during the critical representation period, engaged in serious and substantial unfair labor practices. Consequently, on the credible evidence of record, I find that Respondent Employer thereby interfered with the holding of a fair and free representation election.[25]

[24] Force acknowledged, however, that Wise has "responsibilities that take [Wise] into the physical lab" and "other [unit] employees work in the physical lab . . . ."

[25] The Union (see Union's Br. 52 to 55) also "filed an objection to the *Excelsior* list," because of the failure to provide "full names of employees," and an objection to a "24 hour captive audience speech." The Union cites, inter alia, the supporting testimony of Union Representative Haymen which I credit. I also credit the related testimony of employee Leber. The Union also cites the testimony of employee Shimmel which I credit. Although I agree with these additional objections of the Union, further discussion and resolution of these additional objections is unnecessary and will not affect the disposition of these consolidated proceedings. See also counsel for Respondent Employer's appendix brief, Br. 87 to 93.

CONCLUSIONS OF LAW

1. The challenges to the ballots of Lorna Clark, Marty Rider, Kenneth Grove, Deborah or Debbie Pelen, Rhonda Landis, Linda Masenheimer, Joy or Julie Ide, Donna Martin, Bruce Snyder, Tim Lighty, Ron Minck, Kit Wise, and Chris Sauder are sustained for the reasons stated.

2. The remaining challenged ballots will be opened and counted by the Regional Director and if a revised tally of the ballots then shows that the Union obtained the required majority, certification should issue. Otherwise, the election results are vacated and set aside because the Employer, for the reasons stated above, interfered with the holding of a fair and free election.

[Recommended Order omitted from publication.]

APPENDIX A

The following is a list of unit employees who signed or executed union authorization cards on the dates indicated or by July 25, 1994, with pertinent exhibit and transcript references:

Althoff, William	G.C. Exh. 100	4/29/94	Tr. 1709 to 1712
Anderson, Jeffrey	G.C. Exh. 101	4/16/94	Tr. 748 to 755
Anderson, Lillian	G.C. Exh. 102	5/17/94	Tr. 200 to 223
Anderson, Linda	G.C. Exh. 103	4/22/94	Tr. 1340 to 1342
Anderson, Rod	G.C. Exh. 104	7/13/94	Tr. 1318 to 1322
Arnold, Constance	G.C. Exh. 105	7/15/94	Tr. 1656 to 1659
Bates, Glenn	G.C. Exh. 106	4/19/94	Tr. 200 to 223
Bates, Shirley	G.C. Exh. 107	4/19/94	Tr. 1021 to 1023
Beam, Jeffrey	G.C. Exh. 108	4/22/94	Tr. 537 to 539, 553 to 554
Beaverson, Charles	G.C. Exh. 109	7/12/94	Tr. 1139 to 1146,
Beaverson, Faye	G.C. Exh. 110	(undated)	Tr. 1187 to 1192
Belt, Laura	G.C. Exh. 111	5/2/94	Tr. 1202 to 1206
Blasser, Jeffrey	G.C. Exh. 112	4/16/94	Tr. 1247 to 1250
Blouse, Jeffrey	G.C. Exh. 113	4/18/94	Tr. 756 to 760
Blymire, Paul	G.C. Exh. 114	4/25/94	Tr. 1337 to 1339
Bortner, Donald	G.C. Exh. 115	5/20/94	Tr. 1689 to 1692
Bowman, Larry	G.C. Exh. 116	4/18/94	Tr. 101 to 119, 152 to 154
Brainer Jr., Fred	G.C. Exh. 117	7/15/94	Tr. 1289 to 1293
Brehm, Gary	G.C. Exh. 118	4/18/94	Tr. 760 to 764
Brenneman, Kelly	G.C. Exh. 119	7/18/94	Tr. 2654 to 2661
Brigham, Michael	G.C. Exh. 120	5/11/94	Tr. 201 to 223
Britton, Edward	G.C. Exh. 121	4/20/94	Tr. 764 to 767
Brown, Ted	G.C. Exh. 122	7/14/94	Tr. 1685 to 1689
Buckingham, Donald	G.C. Exh. 123	4/16/94	Tr. 1644 to 1647
Buckingham, James	G.C. Exh. 124	4/18/94	Tr. 736 to 739
Buckingham, Jenny	G.C. Exh. 125	4/18/94	Tr. 733 to 735
Bunch, Donald	G.C. Exh. 126	4/20/94	Tr. 1315 to 1318
Bunch, Gary	G.C. Exh. 127	4/18/94	Tr. 1293 to 1296
Caswell, Denise	G.C. Exh. 130	4/29/94	Tr. 639 to 641, 642 to 643
Clayton, Vincent	G.C. Exh. 131	7/6/94	Tr. 1413 to 1420
Clites, Thomas	G.C. Exh. 132	4/16/94	Tr. 1411 to 1413
Clouser, Gregory	G.C. Exh. 133	4/16/94	Tr. 768 to 770
Coy, Randy	G.C. Exh. 135	4/27/94	Tr. 378 to 379, 415 to 417

Craley, Loy	G.C. Exh. 136	4/20/94	Tr. 973 to 974
Crider, Daniel	G.C. Exh. 137	4/19/94	Tr. 101 to 119, 152 to 154
Crouse, Bruce	G.C. Exh. 138	4/18/94	Tr. 101 to 119, 152 to 154
Crumbling, Brian	G.C. Exh 139	4/20/94	Tr. 1024 to 1027
Crumbling, Leah	G.C. Exh. 140	4/20/94	Tr. 1028 to 1031
Crumbling, Rodney	G.C. Exh. 141	4/20/94	Tr. 1031 to 1034
Davidson, Roger	G.C. Exh. 142	4/19/94	Tr. 1482 to 1486
Davis, Donald	G.C. Exh. 143	4/16/94	Tr. 1683 to 1685
Dettinger, Rick	G.C. Exh. 145	4/19/94	Tr. 1035 to 1037
Dickson, Benjamin	G.C. Exh. 146	4/16/94	Tr. 1038 to 1044
Dietz, William	G.C. Exh. 147	4/19/94	Tr. 1672 to 1675
Dosch, Ronald	G.C. Exh. 148	4/19/94	Tr. 1631 to 1634
Dotts, Mabel	G.C. Exh. 149	5/6/94	Tr. 1305 to 1307
Dowling, Annette	G.C. Exh. 150	5/17/94	Tr. 1329 to 1332
Dravk, Stephen	G.C. Exh. 151	7/15/94	Tr. 1628 to 1631
Dubbs, Paul	G.C. Exh. 152	4/20/94	Tr. 1743 to 1745
Dunlap, Jerry	G.C. Exh. 153	7/15/94	Tr. 101 to 119, 152 to 154
Eckenrode, Charles	G.C. Exh. 154	4/19/94	Tr. 1139 to 1146, 1171 to 1176
Eckenrode, Stacey	G.C. Exh. 155	7/6/94	Tr. 1454 to 1459
Eckenrode, William	G.C. Exh. 156	4/16/94	Tr. 1045 to 1048
Edleblute, Wayne	G.C. Exh. 157	4/16/94	Tr. 1366 to 1368
Elliot, Richard	G.C. Exh. 158	4/20/94	Tr. 1472 to 1476
Eshelman, Jeffrey	G.C. Exh. 159	4/16/94	Tr. 871 to 873
Fake, Larry	G.C. Exh. 160	4/22/94	Tr. 1469 to 1472
Fetrow, Carl	G.C. Exh. 161	4/19/94	Tr. 1139 to 1146, 1171 to 1176
Fisher, Harold	G.C. Exh. 162	4/21/94	Tr. 1326 to 1329
Fisher, John	G.C. Exh. 163	4/21/94	Tr. 1323 to 1326
Fisher, Samuel	G.C. Exh. 164	7/6/94	Tr. 281 to 290, 306 to 310
Fisher, Sharron	G.C. Exh. 165	6/25/94	Tr. 281 to 290, 306 to 310
Flaharty, Linda	G.C. Exh. 166	4/28/94	Tr. 912 to 915
Forbes, Beverly	G.C. Exh. 167	4/20/94	Tr. 1496 to 1497
Force, David	G.C. Exh. 168	4/18/94	Tr. 1499 to 1504
Friend Jr., Nathaniel	G.C. Exh. 169	4/20/94	Tr. 101 to 119, 152 to 154
Fuhrman, Russell	G.C. Exh. 170	4/19/94	Tr. 1746 to 1748
Gardner, Michelle	G.C. Exh. 171	7/21/94	Tr. 691 to 701
Gingerich, Robin	G.C. Exh. 172	4/18/94	Tr. 1206 to 1209
Gladfelter, Paul	G.C. Exh. 173	4/19/94	Tr. 1408 to 1411
Gohn Jr., Glenn	G.C. Exh. 174	4/16/94	Tr. 1401 to 1403
Gonzalez, Wilson	G.C. Exh. 175	4/18/94	Tr. 1770 to 1773
Goodling, Dorothy	G.C. Exh. 176	4/20/94	Tr. 662 to 663, 673 to 675
Gordon, Linda	G.C. Exh. 177	4/25/94	Tr. 281 to 290, 306 to 310
Gouirand, James	G.C. Exh. 178	7/19/94	Tr. 559 to 569, 575 to 578
Graham, Richard	G.C. Exh. 179	4/27/94	Tr. 1648 to 1650
Grim, Delores	G.C. Exh. 180	4/18/94	Tr. 1718 to 1721
Grim, Monica	G.C. Exh. 181	4/25/94	Tr. 1721 to 1725
Hake, David	G.C. Exh. 184	4/19/94	Tr. 1426 to 1428
Hake, Glenn	G.C. Exh. 185	4/19/94	Tr. 1251 to 1255
Hake, Robert	G.C. Exh. 186	4/29/94	Tr. 1048 to 1054
Hampton, Florine	G.C. Exh. 187	7/1/94	Tr. 691 to 701
Hanna, Marlet	G.C. Exh. 188	7/12/94	Tr. 691 to 701
Hartzog, Jennie	G.C. Exh. 190	6/3/94	Tr. 1344 to 1347
Heikes, Roy	G.C. Exh. 191	4/19/94	Tr. 1377 to 1381
Heiner, John	G.C. Exh. 192	4/28/94	Tr. 1785 to 1787
Heiss, Dayne	G.C. Exh. 193	4/16/94	Tr. 770 to 775
Hengst, Cindy	G.C. Exh. 194	4/18/94	Tr. 1209 to 1219
Hengst, Randy	G.C. Exh. 195	4/18/94	Tr. 1797 to 1803
Henry, Geraldine	G.C. Exh. 196	7/2/94	Tr. 1760 to 1763
Henry, Glenn	G.C. Exh. 197	4/16/94	Tr. 1804 to 1806
Henry, Vernon	G.C. Exh. 198	4/22/94	Tr. 1758 to 1760
Hivner Jr., Woodrow	G.C. Exh. 199	4/18/94	Tr. 1055 to 1057
Hoffman, Philip	G.C. Exh. 200	4/18/94	Tr. 464 to 465, 476 to 477
Hohenadel, Bruce	G.C. Exh. 201	4/18/94	Tr. 1220 to 1225
Holland, Gladys	G.C. Exh. 202	5/17/94	Tr. 1059 to 1061
Horner, Larry	G.C. Exh. 203	4/26/94	Tr. 1775 to 1777
Hose, Charles	G.C. Exh. 204	4/19/94	Tr. 1061 to 1064
Hunter, Rodney	G.C. Exh. 205	4/16/94	Tr. 1636 to 1639
Hurley, Shea	G.C. Exh. 206	(undated)	Tr. 605 to 609, 621 to 622
Hursh, Garry	G.C. Exh. 207	4/16/94	Tr. 1275 to 1278
Ilgenfritz, Scott	G.C. Exh. 208	4/16/94	Tr. 1381 to 1387
Jackson, Angela	G.C. Exh. 209	4/26/94	Tr. 1433 to 1435
James, Annabelle	G.C. Exh. 210	4/28/94	Tr. 1286 to 1289
Jamieson, Rebecca	G.C. Exh. 211	5/17/94	Tr. 1308 to 1310
Jimerson, Willeas	G.C. Exh. 212	4/19/94	Tr. 1476 to 1479
Johnson, Terry	G.C. Exh. 213	7/14/94	Tr. 559 to 569, 575 to 578
Johnson, William	G.C. Exh. 214	7/16/94	Tr. 691 to 701
Keister, Richard	G.C. Exh. 215	4/18/94	Tr. 1093 to 1095
Kerrigan, Viola	G.C. Exh. 216	7/5/94	Tr. 202 to 223
Kessler, Randy	G.C. Exh. 217	7/12/94	Tr. 691 to 701
Kinard, Stan	G.C. Exh. 218	5/16/94	Tr. 1139 to 1146, 1171 to 1176
King, Jeffrey	G.C. Exh. 219	4/18/94	Tr. 727 to 728
King, Lois	G.C. Exh. 220	4/19/94	Tr. 1192 to 1198
Kirkland, Frieda	G.C. Exh. 221	4/21/94	Tr. 691 to 701
Klahold, James	G.C. Exh. 222	4/18/94	Tr. 1877 to 1879
Kline, William	G.C. Exh. 223	5/9/94	Tr. 1256 to 1258
Laird, Todd	G.C. Exh. 224	4/20/94	Tr. 691 to 701
Lambeth, Bradley	G.C. Exh. 225	4/18/94	Tr. 1703 to 1705
Landis, Lawrence	G.C. Exh. 226	4/19/94	Tr. 1368 to 1369
Leader, Troy	G.C. Exh. 227	4/19/94	Tr. 437 to 438
Leber, Dennis	G.C. Exh. 228	4/16/94	Tr. 102 to 119, 152 to 154
Lehigh, Patsy	G.C. Exh. 229	4/29/94	Tr. 1270 to 1273
Leiphart, James	G.C. Exh. 230	4/30/94	Tr. 1387 to 1392
Leland, Shirley	G.C. Exh. 231	4/21/94	Tr. 1734 to 1737
Leland, Stewart	G.C. Exh. 232	4/20/94	Tr. 1738 to 1740

Lenker, John	G.C. Exh. 233	5/4/94	Tr. 492 to 496
Lighty, George	G.C. Exh. 234	4/18/94	Tr. 941 to 942, 953 to 955
Livelsberger, Michael	G.C. Exh. 235	4/27/94	Tr. 1139 to 1146, 1171 to 1176
Livelsberger, Richard	G.C. Exh. 236	4/22/94	Tr. 1748 to 1751
Lockard, Gary	G.C. Exh. 237	4/18/94	Tr. 1782 to 1784
Mann, Erik	G.C. Exh. 238	7/19/94	Tr. 1240 to 1243
Marc, Anthony	G.C. Exh. 239	4/16/94	Tr. 1267 to 1270
Masenheimer, John	G.C. Exh. 240	4/22/94	Tr. 1244 to 1247
McCoy, Pearl	G.C. Exh. 241	4/19/94	Tr. 1300 to 1304
McFatridge, Lawrence	G.C. Exh. 242	4/18/94	Tr. 691 to 696
McMaster, Daniel	G.C. Exh. 243	4/20/94	Tr. 1403 to 1408
Miller, Leon	G.C. Exh. 244	4/18/94	Tr. 1675 to 1677
Mimnall, Edward	G.C. Exh. 245	4/18/94	Tr. 1398 to 1401
Mittel, Deborah	G.C. Exh. 246	7/6/94	Tr. 281 to 290, 306 to 310
Mittel, Joel	G.C. Exh. 247	4/19/94	Tr. 1663 to 1670
Mittel, Shane	G.C. Exh. 248	4/18/94	Tr. 996 to 997
Mittel, William	G.C. Exh. 249	7/5/94	Tr. 241 to 290
Moore, Robert	G.C. Exh. 250	4/16/94	Tr. 2079 to 2081
Nace, Fred	G.C. Exh. 251	4/18/94	Tr. 1264 to 1267
Nafziger Jr., Arlie	G.C. Exh. 252	4/18/94	Tr. 559 to 569, 575 to 578
Ness, Ruthetta	G.C. Exh. 253	4/30/94	Tr. 1235 to 1240
Oberdorff, Deborah	G.C. Exh. 255	4/22/94	Tr. 503 to 504, 512 to 513
Orr, Eartha	G.C. Exh. 256	4/19/93	Tr. 101 to 119, 152 to 154
Orr, Linda	G.C. Exh. 257	7/18/94	Tr. 1342 to 1344
Orr, Ruth	G.C. Exh. 258	4/22/94	Tr. 1310 to 1315
Peters, Clifford	G.C. Exh. 259	4/17/94	Tr. 1259 to 1263
Pollack, Robert	G.C. Exh. 260	4/18/94	Tr. 1740 to 1742
Pope, John	G.C. Exh. 261	4/19/94	Tr. 1479 to 1481
Ragler, Joseph	G.C. Exh. 264	5/4/94	Tr. 1443 to 1445
Ream, Daniel	G.C. Exh. 262	4/16/94	Tr. 1273 to 1275
Reever, Eugene	G.C. Exh. 263	4/18/94	Tr. 199 to 223
Reichard, J.A.	G.C. Exh. 265	4/18/94	Tr. 101 to 119, 152 to 154
Reinhold, Jeffrey	G.C. Exh. 266	4/21/94	Tr. 1438 to 1440
Rial, James	G.C. Exh. 267	4/19/94	Tr. 1139 to 1146, 1171 to 1176
Rineholt, Eugene	G.C. Exh. 268	4/20/94	Tr. 1370 to 1372
Roberts, Brian	G.C. Exh. 269	4/18/94	Tr. 1490 to 1492
Rouscher, Michael	G.C. Exh. 271	4/18/94	Tr. 480 to 491
Ruppert, Dino	G.C. Exh. 272	4/19/94	Tr. 1420 to 1424
Ruth, Alan	G.C. Exh. 273	4/20/94	Tr. 101 to 119, 152 to 154
Santiago, Timothy	G.C. Exh. 274	4/21/94	Tr. 1441 to 1443
Sargen, Scott	G.C. Exh. 275	7/13/94	Tr. 844 to 847, 859 to 860
Scheivert, Dennis	G.C. Exh. 276	4/25/94	Tr. 1639 to 1641
Schmuck, Paula	G.C. Exh. 277	4/18/94	Tr. 1198 to 1202
Seichrist, Ronald	G.C. Exh. 278	6/30/94	Tr. 101 to 119, 152 to 154
Selby, Barry	G.C. Exh. 279	4/25/94	Tr. 776 to 778
Shaw, Rick	G.C. Exh. 280	4/16/94	Tr. 1332 to 1335
Sheffer, Gerald	G.C. Exh. 281	4/16/94	Tr. 1492 to 1496
Shenberger, Gary	G.C. Exh. 282	4/21/94	Tr. 1751 to 1754
Shenberger, Judy	G.C. Exh. 283	4/16/94	Tr. 1725 to 1727
Shimmel, Greta	G.C. Exh. 284	4/16/94	Tr. 281 to 290, 306 to 310
Shindel, Richard	G.C. Exh. 285	4/16/94	Tr. 1486 to 1490
Shirey, Allen	G.C. Exh. 286	4/17/94	Tr. 1651 to 1653
Shirey, Joyce	G.C. Exh. 287	4/21/94	Tr. 1225 to 1234
Shoff, Harold	G.C. Exh. 288	4/19/94	Tr. 559 to 569, 575 to 578
Shoff, Janet	G.C. Exh. 289	4/19/94	Tr. 1465 to 1467
Shoff, Paul	G.C. Exh. 290	4/25/94	Tr. 691 to 701
Shorts, Don	G.C. Exh. 291	5/2/94	Tr. 691 to 701
Shultz, David	G.C. Exh. 292	(undated)	Tr. 559 to 569, 575 to 578
Smith, Greg	G.C. Exh. 294	4/18/94	Tr. 1779 to 1782
Snelbaker, Jay	G.C. Exh. 296	6/28/94	Tr. 202 to 223
Snelbaker, Patricia	G.C. Exh. 297	4/22/94	Tr. 1755 to 1757
Snell, Nevin	G.C. Exh. 298	7/5/94	Tr. 1424 to 1426
Snyder, Brian	G.C. Exh. 299	4/18/94	Tr. 812 to 814
Stambaugh, Dale	G.C. Exh. 300	5/3/94	Tr. 1373 to 1376
Stoltzfus, Melvin	G.C. Exh. 301	4/18/94	Tr. 1787 to 1789
Stover, Julie	G.C. Exh. 302	4/19/94	Tr. 1712 to 1715
Stover, Rick	G.C. Exh. 303	4/19/94	Tr. 1715 to 1718
Stover, Robert	G.C. Exh. 304	(undated)	Tr. 1653 to 1656
Strickhouser, Robert	G.C. Exh. 305	4/21/94	Tr. 1429 to 1432
Strocko, Mary	G.C. Exh. 306	4/18/94	Tr. 1468 to 1469
Swartz, Brad	G.C. Exh. 307	4/19/94	Tr. 1701 to 1702
Switzer Jr., John	G.C. Exh. 308	4/17/94	Tr. 1789 to 1792
Taylor, Joyce	G.C. Exh. 309	4/30/94	Tr. 1347 to 1350
Taylor, Michael	G.C. Exh. 310	6/6/94	Tr. 1351 to 1354
Tedder, Billy Joe	G.C. Exh. 311	4/18/94	Tr. 559 to 569, 575 to 578
Terreault, Frank	G.C. Exh. 312	7/5/94	Tr. 101 to 119, 152 to 154
Tice, Lee	G.C. Exh. 313	4/19/94	Tr. 1634 to 1438
Trimmer, Michael	G.C. Exh. 314	7/18/94	Tr. 1773 to 1775
Trout, David	G.C. Exh. 315	4/20/94	Tr. 559 to 569, 575 to 578
Vaden, Brenda	G.C. Exh. 316	4/20/94	Tr. 1696 to 1699
Vieira, Michael	G.C. Exh. 317	4/18/94	Tr. 1435 to 1438
Wallace, Horace	G.C. Exh. 319	4/25/94	Tr. 1641 to 1644
Wallace, Timothy	G.C. Exh. 320	4/19/94	Tr. 1297 to 1300
Waltemyer, Harold	G.C. Exh. 321	4/19/94	Tr. 559 to 569, 575 to 578
Wambaugh, Collen	G.C. Exh. 322	5/5/94	Tr. 1659 to 1663
Ward Jr., Gordon	G.C. Exh. 323	4/16/94	Tr. 1793 to 1796
Warfel, Robert	G.C. Exh. 324	4/20/94	Tr. 559 to 569, 575 to 578
Welsh, Terry	G.C. Exh. 325	5/4/94	Tr. 1767 to 1769
Wildasin, Spurgeon	G.C. Exh. 326	4/18/94	Tr. 101 to 119, 152 to 154
Williams, Mary	G.C. Exh. 327	7/8/94	Tr. 1692 to 1696
Wintermyer, Ray	G.C. Exh. 328	4/19/94	Tr. 241 to 242, 258 to 259
Wise, Tamara	G.C. Exh. 329	7/14/94	Tr. 1459 to 1464
Wolfe, Mary	G.C. Exh. 330	4/16/94	Tr. 1678 to 1682
Wolfgang Sr.,	G.C. Exh. 331	4/16/94	Tr. 1069 to

Curvin			1071, 1077	Young, John	G.C. Exh. 334	4/16/94	Tr. 1705 to 1707
Yost, Angela	G.C. Exh. 332	4/16/94	Tr. 1670 to 1672	Zarfos, Matt	G.C. Exh. 335	4/19/94	Tr. 1879 to 1881
Young, Harry	G.C. Exh. 333	4/19/94	Tr. 1707 to 1709	Zeigler, Frederick	G.C. Exh. 336	4/18/94	Tr. 1392 to 1396